

Introduced by Senator Kopp

December 11, 1996

An act to ~~add Section 11410.60 to the Government~~ amend Sections 125.7, 495, 652, 1247.66, 1267, 1310, 1322, and 2295 of the Business and Professions Code, to add Section 11410.60 to the Government Code, to amend Sections 1280, 1280.1, 1295, 1337.9, 1408, 1410, 1428, 1437, 1615, 1618, 1639.4, 1643.1, 1728.2, 1736, 1736.5, 106715, 108900, 111645, 115145, 116425, and 116625 of, and to add Section 100171 to, the Health and Safety Code, to add Section 1953.5 to the Unemployment Insurance Code, and to amend Sections 14088.23, 14123, 14123.2, 14126.50, 14171, 14171.5, and 14171.6 of the Welfare and Institutions Code, relating to administrative adjudication.

LEGISLATIVE COUNSEL'S DIGEST

SB 68, as amended, Kopp. Administrative adjudication: ~~quasi-public entities.~~

Existing law, operative July 1, 1997, contains provisions regarding the administrative adjudication provisions of the Administrative Procedure Act.

This bill would make these administrative adjudication provisions of the act applicable to a decision by a ~~private~~ quasi-public entity, as defined, if ~~the entity is created by statute for the purpose of administration of a state function a statute vests the power of decision in the entity~~ and, under the federal or state Constitution or a federal or state statute, an

evidentiary hearing for determination of facts is required for formulation and issuance of the decision.

The bill would also provide that whenever the State Department of Health Services is authorized or required by statute, regulation, due process, or a contract to conduct an adjudicative hearing leading to a final decision of the Director of Health Services or the department, in addition to the administrative adjudication provisions otherwise applicable to state agencies, a specific procedure would be prescribed that would, in certain areas of administrative law, govern instead of the otherwise applicable provisions. The bill would make conforming changes to other provisions relating to state hearings.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11410.60 is added to the~~
2 ~~Government Code, to read:~~

3 ~~11410.60. (a) This chapter applies to a decision by a~~
4 ~~private entity if both of the following conditions are met:~~

5 ~~(1) The entity is created by statute for the purpose of~~
6 ~~administration of a state function.~~

7 ~~(2) Under the federal or state Constitution or a federal~~
8 ~~or state statute, an evidentiary hearing for determination~~
9 ~~of facts is required for formulation and issuance of the~~
10 ~~decision.~~

11 ~~(b) Notwithstanding subdivision (a), this chapter does~~
12 ~~not apply to a decision by a private entity if the decision~~
13 ~~is subject to administrative review in an adjudicative~~
14 ~~proceeding to which this chapter applies.~~

15 ~~(c) For the purpose of the application of this chapter~~
16 ~~to a decision by a private entity that meets the conditions~~
17 ~~specified in subdivision (a), unless the provision or~~
18 ~~context requires otherwise, the following terms have the~~
19 ~~following meanings:~~

20 ~~SECTION 1. Section 125.7 of the Business and~~
21 ~~Professions Code is amended to read:~~

1 125.7. In addition to the remedy provided for in
2 Section 125.5, the superior court for the county in which
3 any licensee licensed under Division 2 (commencing
4 with Section 500), or any initiative act referred to in that
5 division, has engaged or is about to engage in any act
6 ~~which~~ *that* constitutes a violation of a chapter of this code
7 administered or enforced by a board referred to in
8 Division 2 ~~2~~ (*commencing with Section 500*), may, upon
9 a petition filed by the board and accompanied by an
10 affidavit or affidavits in support thereof and a
11 memorandum of points and authorities, issue a
12 temporary restraining order or other appropriate order
13 restraining the licensee from engaging in the business or
14 profession for which the person is licensed or from any
15 part thereof, in accordance with ~~the provisions~~ of this
16 section.

17 (a) If the affidavits in support of the petition show that
18 the licensee has engaged or is about to engage in acts or
19 omissions constituting a violation of a chapter of this code
20 and if the court is satisfied that permitting the licensee to
21 continue to engage in the business or profession for which
22 the license was issued will endanger the public health,
23 safety, or welfare, the court may issue an order
24 temporarily restraining the licensee from engaging in the
25 profession for which he or she is licensed.

26 (b) The order may not be issued without notice to the
27 licensee unless it appears from facts shown by the
28 affidavits that serious injury would result to the public
29 before the matter can be heard on notice.

30 (c) Except as otherwise specifically provided by this
31 section, proceedings under this section shall be governed
32 by Chapter 3 (commencing with Section 525) of Title 7
33 of Part 2 of the Code of Civil Procedure.

34 (d) When a restraining order is issued pursuant to this
35 section, or within a time to be allowed by the superior
36 court, but in any case not more than 30 days after the
37 restraining order is issued, an accusation shall be filed
38 with the board pursuant to Section 11503 of the
39 Government Code *or, in the case of a licensee of the State*
40 *Department of Health Services, with that department*

1 *pursuant to Section 100171 of the Health and Safety Code.*
2 The accusation shall be served upon the licensee as
3 provided by Section 11505 of the Government Code. The
4 licensee shall have all of the rights and privileges available
5 as specified in Chapter 5 (commencing with Section
6 11500) of Part 1 of Division 3 of Title 2 of the Government
7 Code;~~—however~~ *However*, if the licensee requests a
8 hearing on the accusation, the board shall provide the
9 licensee with a hearing within 30 days of the request and
10 a decision within 15 days of the date of the conclusion of
11 the hearing, or the court may nullify the restraining order
12 previously issued. Any restraining order issued pursuant
13 to this section shall be dissolved by operation of law at the
14 time the board's decision is subject to judicial review
15 pursuant to Section 1094.5 of the Code of Civil Procedure.

16 (e) The remedy provided for in this section shall be in
17 addition to, and not a limitation upon, the authority
18 provided by any other provision of this code.

19 *SEC. 2. Section 495 of the Business and Professions*
20 *Code is amended to read:*

21 495. Notwithstanding any other provision of law, any
22 entity authorized to issue a license or certificate pursuant
23 to this code may publicly reprove a licensee or
24 certificate holder thereof, for any act ~~which~~ *that* would
25 constitute grounds to suspend or revoke a license or
26 certificate. Any proceedings for public reproof, public
27 reproof and suspension, or public reproof and
28 revocation shall be conducted in accordance with
29 Chapter 5 (commencing with Section 11500) of Part 1 of
30 Division 3 of Title 2 of the Government Code, *or, in the*
31 *case of a licensee or certificate holder under the*
32 *jurisdiction of the State Department of Health Services,*
33 *in accordance with Section 100171 of the Health and*
34 *Safety Code.*

35 *SEC. 3. Section 652 of the Business and Professions*
36 *Code is amended to read:*

37 652. Violation of this article in the case of a licensed
38 person constitutes unprofessional conduct and grounds
39 for suspension or revocation of his or her license by the
40 board by whom he or she is licensed, or if a license has

1 been issued in connection with a place of business, then
 2 for the suspension or revocation of the place of business
 3 in connection with which the violation occurs. The
 4 proceedings for suspension or revocation shall be
 5 conducted in accordance with ~~the Administrative~~
 6 ~~Procedure Act~~, Chapter 5 (*commencing with Section*
 7 *11500*) of Part 1 of Division 3 of Title 2 of the Government
 8 Code, and each board shall have all the powers granted
 9 therein. *However, in the case of a licensee of the State*
 10 *Department of Health Services, the proceedings shall be*
 11 *conducted in accordance with Section 110171 of the*
 12 *Health and Safety Code.* In addition, any violation
 13 constitutes a misdemeanor as to any and all persons
 14 offering, delivering, receiving, accepting, or
 15 participating in any rebate, refund, commission,
 16 preference, patronage dividend, unearned discount, or
 17 consideration, whether or not licensed under this
 18 division, and is punishable by imprisonment in the county
 19 jail not exceeding six months, ~~or~~ by a fine not exceeding
 20 two thousand five hundred dollars (\$2,500), or by both
 21 the imprisonment and fine.

22 *SEC. 4. Section 1247.66 of the Business and*
 23 *Professions Code is amended to read:*

24 1247.66. (a) The department may deny, suspend, or
 25 revoke the certification of a hemodialysis technician if it
 26 finds that the hemodialysis technician is not in
 27 compliance with this article, or any regulations adopted
 28 by the department to administer this article.

29 (b) The department may deny, suspend, or revoke the
 30 certification of a hemodialysis technician for any of the
 31 following causes:

32 (1) Unprofessional conduct, which includes
 33 incompetence or gross negligence in carrying out his or
 34 her usual functions.

35 (2) Procuring a certificate by fraud,
 36 misrepresentation, or mistake.

37 (3) Making or giving any false statement or
 38 information in conjunction with the application for
 39 issuance or renewal of a certificate.

(4) Conviction of a crime substantially related to the qualifications, functions, and duties of a hemodialysis technician in which event the record of the conviction shall be conclusive evidence thereof.

(c) In addition to other acts constituting unprofessional conduct within the meaning of this article, all of the following constitute unprofessional conduct:

(1) Conviction for, or use of, any narcotic drug, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the hemodialysis technician or any other person, or the public, to the extent that this use impairs the ability to conduct, with safety to the public, the practice of a hemodialysis technician.

(2) Abuse, whether verbal, physical, or mental, of a patient in any setting where health care is being rendered.

(d) Proceedings to deny, suspend, or revoke a certification under this article shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code~~ *Section 100171 of the Health and Safety Code*.

(e) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 1267 of the Business and Professions Code is amended to read:

1267. Any denial, suspension, or revocation of a license under this chapter shall be conducted in compliance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code~~ *Section 100171 of the Health and Safety Code*.

SEC. 6. Section 1310 of the Business and Professions Code is amended to read:

1310. If the department determines that a laboratory that has been issued a license or registration under this chapter, except for a laboratory only performing tests or examinations classified as waived under CLIA, no longer substantially meets the requirements of this chapter or the regulations adopted thereunder, the department, in lieu of, or in addition to, revocation or suspension of the license or registration under Sections 1320 or 1323, may impose any of the following:

(a) Directed plans of correction, as defined under CLIA.

(b) Civil money penalties in an amount ranging from fifty dollars (\$50) to three thousand dollars (\$3,000) per day of noncompliance, or per violation, for a condition level deficiency that does not pose immediate jeopardy, to an amount ranging from three thousand fifty dollars (\$3,050) to ten thousand dollars (\$10,000) per day of noncompliance, or per violation, for a condition level deficiency that poses immediate jeopardy, but only after notice and an opportunity to respond in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government~~ *Section 100171 of the Health and Safety Code*, and consideration of facts enumerated in CLIA in Section 493.1834 of Title 42 of the Code of Federal Regulations.

(c) Onsite monitoring, as defined under CLIA, and payment for the costs of onsite monitoring.

(d) Any combination of the actions described in subdivisions (a), (b), and (c).

SEC. 7. Section 1322 of the Business and Professions Code is amended to read:

1322. The proceedings under this chapter for the suspension or revocation of a license or registration shall be conducted in accordance with ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government~~ *Section 100171 of the Health and Safety Code* and the department shall have all the powers granted therein.

SEC. 8. Section 22958 of the Business and Professions Code is amended to read:

1 22958. (a) The state department may assess civil
2 penalties against any person, firm, or corporation that
3 sells, gives, or in any way furnishes to another person who
4 is under the age of 18 years, any tobacco, cigarette, or
5 cigarette papers, or any other instrument or
6 paraphernalia that is designed for the smoking or
7 ingestion of tobacco, products prepared from tobacco, or
8 any controlled substance, according to the following
9 schedule: (1) a civil penalty of from two hundred dollars
10 (\$200) to three hundred dollars (\$300) for the first
11 violation, (2) a civil penalty of from six hundred dollars
12 (\$600) to nine hundred dollars (\$900) for the second
13 violation within a five-year period, (3) a civil penalty of
14 from one thousand two hundred dollars (\$1,200) to one
15 thousand eight hundred dollars (\$1,800) for a third
16 violation within a five-year period, (4) a civil penalty of
17 from three thousand dollars (\$3,000) to four thousand
18 dollars (\$4,000) for a fourth violation within a five-year
19 period, or (5) a civil penalty of from five thousand dollars
20 (\$5,000) to six thousand dollars (\$6,000) for a fifth or
21 subsequent violation within a five-year period.

22 (b) The state department shall assess penalties in
23 accordance with the schedule set forth in subdivision (a)
24 against any person, firm, or corporation that sells, offers
25 for sale, or distributes tobacco products from a cigarette
26 or tobacco products vending machine, or any person,
27 firm, or corporation that leases, furnishes, or services
28 these machines in violation of Section 22960.

29 (c) If a civil penalty has been assessed pursuant to this
30 section against any person, firm, or corporation for a
31 single, specific violation of this division, the person, firm,
32 or corporation shall not be prosecuted under Section 308
33 of the Penal Code for a violation based on the same facts
34 or specific incident for which the civil penalty was
35 assessed. If any person, firm, or corporation has been
36 prosecuted for a single, specific violation of Section 308 of
37 the Penal Code, the person, firm, or corporation shall not
38 be assessed a civil penalty under this section based on the
39 same facts or specific incident upon which the

1 prosecution under Section 308 of the Penal Code was
2 based.

3 (d) (1) In the case of a corporation or business with
4 more than one retail location, to determine the number
5 of accumulated violations for purposes of the penalty
6 schedule set forth in subdivision (a), violations of this
7 division by one retail location shall not be accumulated
8 against other retail locations of that same corporation or
9 business.

10 (2) In the case of a retail location that operates
11 pursuant to a franchise as defined in Section 20001 of the
12 ~~Business and Professions Code~~, violations of this division
13 accumulated and assessed against a prior owner of a single
14 franchise location shall not be accumulated against a new
15 owner of the same single franchise location for purposes
16 of the penalty schedule set forth in subdivision (a).

17 (e) Proceedings under this section shall be conducted
18 in accordance with ~~Chapter 5 (commencing with Section~~
19 ~~11500) of Part 1 of Division 3 of Title 2 of the Government~~
20 ~~Section 100171 of the Health and Safety Code.~~

21 *SEC. 9. Section 11410.60 is added to the Government*
22 *Code, to read:*

23 *11410.60. (a) As used in this section, “quasi-public*
24 *entity” means an entity, other than a governmental*
25 *agency, whether characterized by statute as a public*
26 *corporation, public instrumentality, or otherwise, that is*
27 *expressly created by statute for the purpose of*
28 *administration of a state function.*

29 *(b) This chapter applies to an adjudicative proceeding*
30 *conducted by a quasi-public entity if all of the following*
31 *conditions are satisfied:*

32 *(1) A statute vests the power of decision in the*
33 *quasi-public entity.*

34 *(2) A statute, the United States Constitution, or the*
35 *California Constitution, requires an evidentiary hearing*
36 *for determination of facts for formulation and issuance of*
37 *the decision. Nothing in this section is intended to create*
38 *an evidentiary hearing requirement that is not otherwise*
39 *statutorily or constitutionally imposed.*

1 (3) *The decision is not otherwise subject to*
2 *administrative review in an adjudicative proceeding to*
3 *which this chapter applies.*

4 (c) *For the purpose of application of this chapter to a*
5 *decision by a quasi-public entity:*

6 (1) “Agency,” as defined in Section 11405.30, also
7 includes the ~~private~~ *quasi-public entity*.

8 (2) “Regulation” ~~means~~ *includes* a rule promulgated
9 by the ~~private~~ *quasi-public entity*.

10 (d) Article 8 (commencing with Section 11435.05),
11 requiring language assistance in an adjudicative
12 proceeding, applies to a ~~private entity that meets the~~
13 ~~conditions specified in subdivision (a)~~ *quasi-public entity*
14 to the same extent as a state agency under Section 11018.

15 *SEC. 10. Section 1280 of the Health and Safety Code*
16 *is amended to read:*

17 1280. (a) The state department may provide
18 consulting services upon request to any health facility to
19 assist in the identification or correction of deficiencies or
20 the upgrading of the quality of care provided by the
21 health facility.

22 (b) The state department shall notify the health
23 facility of all deficiencies in its compliance with this
24 chapter and the rules and regulations adopted
25 hereunder, and the health facility shall agree with the
26 state department upon a plan of correction that shall give
27 the health facility a reasonable time to correct these
28 deficiencies. If at the end of the allotted time, as revealed
29 by inspection, the health facility has failed to correct the
30 deficiencies, the director may take action to revoke or
31 suspend the license.

32 (c) (1) In addition to subdivision (a), if the health
33 facility is licensed under subdivision (a), (b), or (f) of
34 Section 1250, and if the facility fails to implement a plan
35 of correction that has been agreed upon by both the
36 facility and the state department within a reasonable
37 time, the state department may order implementation of
38 the plan of correction previously agreed upon by the
39 facility and the state department. If the facility and the
40 state department fail to agree upon a plan of correction

1 within a reasonable time and if the deficiency poses an
 2 immediate and substantial hazard to the health or safety
 3 of patients, then the director may take action to order
 4 implementation of a plan of correction devised by the
 5 state department. The order shall be in writing and shall
 6 contain a statement of the reasons for the order. If the
 7 facility does not agree that the deficiency poses an
 8 immediate and substantial hazard to the health or safety
 9 of patients or if the facility believes that the plan of
 10 correction will not correct the hazard, or if the facility
 11 proposes a more efficient or effective means of
 12 remedying the deficiency, the facility may, within 10 days
 13 of receiving the plan of correction from the department,
 14 appeal the order to the director. The director shall review
 15 information provided by the facility, the department, and
 16 other affected parties and within a reasonable time
 17 render a decision in writing that shall include a statement
 18 of reasons for the order. During the period which the
 19 director is reviewing the appeal, the order to implement
 20 the plan of correction shall be stayed. *The opportunity for*
 21 *appeal provided pursuant to this subdivision shall not be*
 22 *deemed to be an adjudicative hearing and is not required*
 23 *to comply with Section 100171.*

24 (2) If any condition within a health facility licensed
 25 under subdivision (a), (b), or (f) of Section 1250 poses an
 26 immediate and substantial hazard to the health or safety
 27 of patients, the state department may order either of the
 28 following until the hazardous condition is corrected:

29 (A) Reduction in the number of patients.

30 (B) Closure of the unit or units within the facility that
 31 pose the risk. If the unit to be closed is an emergency
 32 room in a designated facility, as defined in Section
 33 1797.67, the state department shall notify and coordinate
 34 with the local emergency medical services agency.

35 (3) The facility may appeal an order pursuant to
 36 paragraph (2) by appealing to the superior court of the
 37 county in which the facility is located.

38 (4) Paragraph (2) shall not apply to a deficiency for
 39 which the facility was cited prior to January 1, 1994.

1 (d) Reports on the results of each inspection of a
2 health facility shall be prepared by the inspector or
3 inspector team and shall be kept on file in the state
4 department along with the plan of correction and health
5 facility comments. The inspection report may include a
6 recommendation for reinspection. Inspection reports of
7 an intermediate care facility/developmentally disabled
8 habilitative or an intermediate care
9 facility/developmentally disabled—nursing shall be
10 provided by the state department to the appropriate
11 regional center pursuant to Chapter 5 (commencing with
12 Section 4620) of Division 4.5 of the Welfare and
13 Institutions Code.

14 (e) All inspection reports and lists of deficiencies shall
15 be open to public inspection when the state department
16 has received verification that the health facility has
17 received the report from the state department. All plans
18 of correction shall be open to public inspection upon
19 receipt by the state department.

20 (f) In no event shall the act of providing a plan of
21 correction, the content of the plan of correction, or the
22 execution of a plan of correction, be used in any legal
23 action or administrative proceeding as an admission
24 within the meaning of Sections 1220 to 1227, inclusive, of
25 the Evidence Code against the health facility, its licensee,
26 or its personnel.

27 *SEC. 11. Section 1280.1 of the Health and Safety Code*
28 *is amended to read:*

29 1280.1. (a) If a licensee of a health facility licensed
30 under subdivision (a), (b), or (f) of Section 1250 fails to
31 correct a deficiency within the time specified in a plan of
32 correction, the state department may assess the licensee
33 a civil penalty in an amount not to exceed fifty dollars
34 (\$50) per patient affected by the deficiency for each day
35 that the deficiency continues beyond the date specified
36 for correction. The civil penalties shall be assessed only
37 for deficiencies that pose an immediate and substantial
38 hazard to the health or safety of patients. If the licensee
39 disputes a determination by the state department
40 regarding alleged failure to correct a deficiency or

1 regarding the reasonableness of the proposed deadline
2 for correction, the licensee may, within 10 days, request
3 a hearing pursuant to ~~Chapter 5 (commencing with~~
4 ~~Section 11500) of Division 3 of Title 2 of the Government~~
5 ~~Code Section 100171~~. Penalties shall be paid when appeals
6 pursuant to those provisions have been exhausted.

7 (b) This section shall not apply to a deficiency for
8 which a facility was cited prior to January 1, 1994.

9 *SEC. 12. Section 1295 of the Health and Safety Code*
10 *is amended to read:*

11 1295. Proceedings for the suspension, revocation, or
12 denial of licenses or special permits under this chapter
13 shall be conducted in accordance with ~~the provisions of~~
14 ~~Chapter 5 (commencing with Section 11500) of Part 1 of~~
15 ~~Division 3 of Title 2 of the Government Code Section~~
16 ~~100171~~, and the state department shall have all the powers
17 granted by ~~such provisions that section~~. In the event of
18 conflict between ~~the provisions of this chapter and such~~
19 ~~provisions of the Government Code Section 100171~~, the
20 ~~provisions of the Government Code Section 100171~~ shall
21 prevail.

22 *SEC. 13. Section 1337.9 of the Health and Safety Code*
23 *is amended to read:*

24 1337.9. (a) The state department may deny an
25 application for, or initiate an action to suspend or revoke,
26 a nurse assistant, or deny a training and examination
27 application.

28 (b) The state department shall deny a training and
29 examination application and deny, suspend, or revoke a
30 certificate issued under this article if the applicant or
31 certificate holder has been convicted of a violation or
32 attempted violation of any one or more of the following
33 Penal Code provisions: Section 187, subdivision (a) of
34 Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211,
35 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267,
36 inclusive, Section 273a, 273.5, or 285, subdivisions (c), (d),
37 (f), and (g) of Section 286, Section 288, subdivisions (c),
38 (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5,
39 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j,

1 inclusive, Section 487, 503, or 518, unless any of the
2 following applies:

3 (1) The person was convicted of a felony and has
4 obtained a certificate of rehabilitation under Chapter 3.5
5 (commencing with Section 4852.01) of Title 6 of the Penal
6 Code and the information or accusation against him or
7 her has been dismissed pursuant to Section 1203.4 of the
8 Penal Code.

9 (2) The person was convicted of a misdemeanor and
10 the information or accusation against him or her has been
11 dismissed pursuant to Section 1203.4 or 1203.4a of the
12 Penal Code.

13 (3) The certificate holder was convicted of a felony or
14 a misdemeanor, but has previously disclosed the fact of
15 each conviction to the department, and the department
16 has made a determination in accordance with law that the
17 conviction does not disqualify the applicant from
18 certification.

19 (c) An application or certificate shall be denied,
20 suspended, or revoked upon conviction in another state
21 of an offense that, if committed or attempted in this state,
22 would have been punishable as one or more of the
23 offenses set forth in subdivision (b), unless evidence of
24 rehabilitation comparable to the certificate of
25 rehabilitation or dismissal of a misdemeanor set forth in
26 paragraph (1) or (2) of subdivision (b) is provided.

27 (d) The state department may deny an application or
28 deny, suspend, or revoke a certificate issued under this
29 article for any of the following:

30 (1) Unprofessional conduct, including, but not limited
31 to, incompetence, gross negligence unless due to
32 circumstances beyond the nurse assistant's control,
33 physical, mental, or verbal abuse of patients or
34 misappropriation of property of patients or others.

35 (2) Conviction of a crime substantially related to the
36 qualifications, functions, and duties of a certified nurse
37 assistant, irrespective of a subsequent order under
38 Section 1203.4, 1203.4a, or 4852.13 of the Penal Code,
39 where the state department determines that the
40 applicant or certificate holder has not adequately

1 demonstrated that he or she has been rehabilitated and
2 will present a threat to the health, safety, or welfare of
3 patients.

4 (3) Conviction for, or use of, any controlled substance
5 as defined in Division 10 (commencing with Section
6 11000), or any dangerous drug, as defined in Article 7
7 (commencing with Section 4211) of Chapter 9, or
8 alcoholic beverages, to an extent or in a manner
9 dangerous or injurious to the certified nurse assistant, any
10 other person, or the public, to the extent that this use
11 would impair the ability to conduct, with safety to the
12 public, the practice authorized by a certificate.

13 (4) Procuring a certified nurse assistant certificate by
14 fraud or misrepresentation or mistake.

15 (5) Making or giving any false statement or
16 information in conjunction with the application for
17 issuance of a nurse assistant certificate or training and
18 examination application.

19 (6) Impersonating any applicant, or acting as proxy for
20 an applicant, in any examination required under this
21 article for the issuance of a certificate.

22 (7) Impersonating another certified nurse assistant, a
23 licensed vocational nurse, or a registered nurse, or
24 permitting or allowing another person to use a certificate
25 for the purpose of providing nursing services.

26 (8) Violating or attempting to violate, directly or
27 indirectly, or assisting in or abetting the violating of, or
28 conspiring to violate any provision or term of, this article.

29 (e) When the state department determines that a
30 certificate shall be suspended, the state department shall
31 specify the period of actual suspension. The state
32 department may determine that the suspension shall be
33 stayed, placing the certificate holder on probation with
34 specified conditions for a period not to exceed two years.
35 When the state department determines that probation is
36 the appropriate action, the certificate holder shall be
37 notified that in lieu of the state department proceeding
38 with a formal action to suspend the certification and in
39 lieu of an appeal pursuant to subdivision (h), the
40 certificate holder may request to enter into a diversion

1 program agreement. A diversion program agreement
2 shall specify terms and conditions related to matters,
3 including, but not limited to, work performance,
4 rehabilitation, training, counseling, progress reports, and
5 treatment programs. If a certificate holder successfully
6 completes a diversion program, no action shall be taken
7 upon the allegations that were the basis for the diversion
8 agreement. Upon failure of the certificate holder to
9 comply with the terms and conditions of an agreement,
10 the state department may proceed with a formal action
11 to suspend or revoke the certification.

12 (f) A plea or verdict of guilty, or a conviction following
13 a plea of nolo contendere shall be deemed a conviction
14 within the meaning of this article. The state department
15 may deny an application or deny, suspend, or revoke a
16 certification based on a conviction as provided in this
17 article when the judgment of conviction is entered or
18 when an order granting probation is made suspending
19 the imposition of sentence.

20 (g) Upon determination to deny an application or
21 deny, revoke, or suspend a certificate, the state
22 department shall notify the applicant or certificate
23 holder in writing by certified mail of all of the following:

24 (1) The reasons for the determination.

25 (2) The applicant's or certificate holder's right to
26 appeal the determination if the determination was made
27 under subdivision (d).

28 (h) (1) Upon written notification that the state
29 department has determined that an application shall be
30 denied or a certificate shall be denied, suspended, or
31 revoked under subdivision (d), the applicant or
32 certificate holder may request an administrative hearing
33 by submitting a written request to the state department
34 within 20 business days of receipt of the written
35 notification. ~~Notwithstanding Chapter 5 (commencing~~
36 ~~with Section 11500) of Part 1 of Division 3 of Title 2 of the~~
37 ~~Government Code, upon~~ Upon receipt of a written
38 request, the state department shall hold an
39 administrative hearing ~~providing the applicant or~~
40 ~~certificate holder with all of the following:~~

1 ~~(A) The opportunity to present his or her position,~~
2 ~~orally or in writing, with or without legal representation.~~

3 ~~(B) The opportunity to subpoena and cross-examine~~
4 ~~witnesses pursuant to the procedures specified in Section~~
5 ~~100171, except where those procedures are inconsistent~~
6 ~~with this section.~~

7 (2) ~~Hearings~~—A hearing under this section shall be
8 conducted by a hearing ~~officers~~ officer or administrative
9 law judge designated by the director at a location, other
10 than the work facility, convenient to the applicant or
11 certificate holder. The hearing shall be tape recorded and
12 a written decision shall be sent by certified mail to the
13 applicant or certificate holder within 30 calendar days of
14 the hearing. Except as specified in subdivision (i), the
15 effective date of an action to revoke or suspend a
16 certificate shall be specified in the written decision, or if
17 no administrative hearing is timely requested, the
18 effective date will be 21 business days from written
19 notification of the department's determination to revoke
20 or suspend.

21 (i) The state department may revoke or suspend a
22 certificate prior to any hearing when immediate action is
23 necessary in the judgment of the director to protect the
24 public welfare. Notice of this action, including a
25 statement of the necessity of immediate action to protect
26 the public welfare, shall be sent in accordance with
27 subdivision (g). If the certificate holder requests an
28 administrative hearing pursuant to subdivision (h), the
29 state department shall hold the administrative hearing as
30 soon as possible but not later than 30 calendar days from
31 receipt of the request for a hearing. A written hearing
32 decision upholding or setting aside the action shall be sent
33 by certified mail to the certificate holder within 30
34 calendar days of the hearing.

35 (j) Upon the expiration of the term of suspension, he
36 or she shall be reinstated by the state department and
37 shall be entitled to resume practice unless it is established
38 to the satisfaction of the state department that the person
39 has practiced as a certified nurse assistant in ~~California~~

1 *this state* during the term of suspension. In this event, the
2 state department shall revoke the person's certificate.

3 (k) Upon a determination to deny an application or
4 deny, revoke, or suspend a certificate, the *state*
5 department shall notify the employer of the applicant or
6 certificate holder in writing of that determination, and
7 whether the determination is final, or whether a hearing
8 is pending relating to this determination. If a licensee or
9 facility is required to deny employment or terminate
10 employment of the employee based upon notice from the
11 state that the employee is determined to be unsuitable for
12 employment under this section, the licensee or facility
13 shall not incur criminal, civil, unemployment insurance,
14 workers compensation, or administrative liability as a
15 result of that denial or termination.

16 *SEC. 14. Section 1408 of the Health and Safety Code*
17 *is amended to read:*

18 1408. (a) Upon verification of compliance with this
19 chapter and with the approval of the department, the
20 department shall issue the license to the applicant.

21 (b) If the applicant is not in compliance with this
22 chapter, the department shall deny the applicant a
23 license. Immediately upon the denial of any license, the
24 department shall notify the applicant in writing. Within
25 20 days of receipt of the department's notice, the
26 applicant may present his or her written petition for a
27 hearing to the department. The proceedings shall be
28 conducted in accordance with ~~Chapter 5 (commencing~~
29 ~~with Section 11500) of Part 1 of Division 3 of Title 2 of the~~
30 ~~Government Code Section 100171.~~

31 *SEC. 15. Section 1410 of the Health and Safety Code*
32 *is amended to read:*

33 1410. The department may suspend or revoke
34 licenses issued under this chapter for violation of any
35 provisions of this chapter or rules and regulations
36 promulgated hereunder. In addition, the department
37 shall assess a civil penalty in the amount of fees received
38 by a licensee as a result of a violation of any provisions of
39 this chapter or rules and regulations promulgated

1 hereunder. *Proceedings to suspend or revoke a license*
2 *shall be conducted pursuant to Section 100171.*

3 *SEC. 16. Section 1428 of the Health and Safety Code*
4 *is amended to read:*

5 1428. (a) If the licensee desires to contest a citation
6 or the proposed assessment of a civil penalty therefor, the
7 licensee shall use the processes described in subdivisions
8 (b) and (c) for classes “AA,” “A,” or “B” citations. As a
9 result of a citation review conference, a citation or the
10 proposed assessment of a civil penalty may be affirmed,
11 modified, or dismissed by the director or the director’s
12 designee. If the director’s designee affirms, modifies, or
13 dismisses the citation or proposed assessment of a civil
14 penalty, he or she shall state with particularity in writing
15 his or her reasons for that action, and shall immediately
16 transmit a copy thereof to each party to the original
17 complaint. If the licensee desires to contest a decision
18 made after the citation review conference, the licensee
19 shall inform the director in writing within 15 business
20 days after he or she receives the decision by the director’s
21 designee.

22 (b) If a licensee notifies the director that he or she
23 intends to contest a class “AA” or a class “A” citation, the
24 licensee may first within 15 business days after service of
25 the citation notify the director in writing of his or her
26 request for a citation review conference. The licensee
27 shall inform the director in writing, within 15 business
28 days of the service of the citation or the receipt of the
29 decision of the director’s designee after the citation
30 review conference, of the licensee’s intent to adjudicate
31 the validity of the citation in the municipal or superior
32 court in the county in which the long-term health care
33 facility is located. In order to perfect a judicial appeal of
34 a contested citation, a licensee shall file a civil action in
35 the municipal or superior court in the county in which the
36 long-term health care facility is located. The action shall
37 be filed no later than 90 calendar days after a licensee
38 notifies the director he or she intends to contest the
39 citation, or no later than 90 days after the receipt of the
40 decision by the director’s designee after the citation

1 review conference, and served not later than 90 days after
2 filing. Notwithstanding any other provision of law, for
3 those citations issued after January 1, 1993, a licensee
4 prosecuting a judicial appeal shall file and serve an
5 at-issue memorandum pursuant to Rule 209 of the
6 California Rules of Court by July 1, 1993, or within six
7 months after the state department files its answer in the
8 appeal, whichever is later. Notwithstanding subdivision
9 (d), the court shall dismiss the appeal upon motion of the
10 state department if the at-issue memorandum is not filed
11 by the facility within the period specified.

12 (c) If a licensee desires to contest a class “B” citation,
13 the licensee may request, within 15 business days after
14 service of the citation, a citation review conference, by
15 writing the director or the director’s designee of the
16 licensee’s intent to appeal the citation through the
17 citation review conference. If the licensee wishes to
18 appeal the citation which has been upheld in a citation
19 review conference, the licensee shall, within 15 working
20 days from the date the citation review conference
21 decision was rendered, notify the director or the
22 director’s designee that he or she wishes to appeal the
23 decision through the procedures set forth in ~~subdivision~~
24 ~~(e) of Section 14123 of the Welfare and Institutions Code~~
25 *Section 100171*. The administrative law judge may affirm,
26 modify, or dismiss the citation or the proposed assessment
27 of a civil penalty. The licensee may choose to have his or
28 her appeal heard by the administrative law judge without
29 having first appealed the decision to a citation review
30 conference by notifying the director in writing within 15
31 business days of the service of the citation.

32 (d) If a licensee is dissatisfied with the decision of the
33 administrative law judge, the licensee may, in lieu of
34 seeking judicial review of the decision as provided in
35 Section 1094.5 of the Code of Civil Procedure, elect to
36 submit the matter to binding arbitration by filing, within
37 60 days of its receipt of the decision, a request for
38 arbitration with the American Arbitration Association.
39 The parties shall agree upon an arbitrator designated
40 from the American Arbitration Association in accordance

1 with the association's established rules and procedures.
2 The arbitration hearing shall be set within 45 days of the
3 election to arbitrate, but in no event less than 28 days
4 from the date of selection of an arbitrator. The arbitration
5 hearing may be continued up to 15 additional days if
6 necessary at the arbitrator's discretion. Except as
7 otherwise specifically provided in this subdivision, the
8 arbitration hearing shall be conducted in accordance
9 with the American Arbitration Association's established
10 rules and procedures.

11 (e) If an appeal is prosecuted under this section,
12 including an appeal taken in accordance with subdivision
13 (c) of Section 14123 of the Welfare and Institutions Code,
14 the state department shall have the burden of
15 establishing by a preponderance of the evidence that (1)
16 the alleged violation did occur, (2) the alleged violation
17 met the criteria for the class of citation alleged, and (3)
18 the assessed penalty was appropriate. The state
19 department shall also have the burden of establishing by
20 a preponderance of the evidence that the assessment of
21 a civil penalty should be upheld. If a licensee fails to notify
22 the director in writing that he or she intends to contest
23 the citation, or the proposed assessment of a civil penalty
24 therefor, or the decision made by the director's designee,
25 after a citation review conference, within the time
26 specified in this section, the decision by the director's
27 designee after a citation review conference shall be
28 deemed a final order of the state department and shall not
29 be subject to further administrative review, except that
30 the licensee may seek judicial relief from the time limits
31 specified in this section. If a licensee appeals a contested
32 citation or the assessment of a civil penalty, no civil
33 penalty shall be due and payable unless and until the
34 appeal is terminated in favor of the state department.

35 (f) The director or the director's designee shall
36 establish an independent unit of trained citation review
37 conference hearing officers within the state department
38 to conduct citation review conferences. Citation review
39 conference hearing officers shall be directly responsible
40 to the deputy director for licensing and certification, and

1 shall not be concurrently employed as supervisors,
2 district administrators, or regional administrators with
3 the licensing and certification division. Specific training
4 shall be provided to members of this unit on conducting
5 an informal conference, with emphasis on the regulatory
6 and legal aspects of long-term health care.

7 Where the state department issues a citation as a result
8 of a complaint or regular inspection visit, and a resident
9 or residents are specifically identified in a citation by
10 name as being specifically affected by the violation, then
11 the following persons may attend the citation review
12 conference:

13 (1) The complainant and his or her designated
14 representative.

15 (2) A personal health care provider, designated by the
16 resident.

17 (3) A personal attorney, only if the long-term health
18 care facility has an attorney present.

19 (4) Any person representing the Office of the State
20 Long-Term Care Ombudsman, as defined in subdivision
21 (c) of Section 9701 of the Welfare and Institutions Code.

22 Where the state department determines that residents
23 in the facility were threatened by the cited violation but
24 does not name specific residents, any person representing
25 the Office of the State Long-Term Care Ombudsman, as
26 defined in subdivision (c) of Section 9701 of the Welfare
27 and Institutions Code, and a representative of the
28 residents or family council at the facility may participate
29 to represent all residents. In this case, these
30 representatives shall be the sole participants for the
31 residents in the conference. The residents' council shall
32 designate which representative will participate.

33 The complainant, affected resident, or their designated
34 representatives shall be notified by the state department
35 of the conference and their right to participate. The
36 director's designee shall notify the complainant or his or
37 her designated representative and the affected resident
38 or his or her designated representative, of his or her
39 determination based on the citation review conference.

1 (g) In assessing the civil penalty for a violation, all
2 relevant facts shall be considered, including, but not
3 limited to, all of the following:

4 (1) The probability and severity of the risk which the
5 violation presents to the patient's or resident's mental and
6 physical condition.

7 (2) The patient's or resident's medical condition.

8 (3) The patient's or resident's mental condition and
9 his or her history of mental disability.

10 (4) The good faith efforts exercised by the facility to
11 prevent the violation from occurring.

12 (5) The licensee's history of compliance with
13 regulations.

14 (h) Except as otherwise provided in this subdivision,
15 an assessment of civil penalties for a class "A" or class "B"
16 violation shall be trebled and collected for a second and
17 subsequent violation for which a citation of the same class
18 was issued within any 12-month period. Trebling shall
19 occur only if the first citation issued within the 12-month
20 period was issued in the same class, a civil penalty was
21 assessed, and a plan of correction was submitted for the
22 previous same-class violation occurring within the period,
23 without regard to whether the action to enforce the
24 previous citation has become final. However, the
25 increment to the civil penalty required by this
26 subdivision shall not be due and payable unless and until
27 the previous action has terminated in favor of the state
28 department.

29 If the class "B" citation is issued for a patient's rights
30 violation, as defined in subdivision (d) of Section 1424, it
31 shall not be trebled unless the state department
32 determines the violation has a direct or immediate
33 relationship to the health, safety, security, or welfare of
34 long-term health care facility residents.

35 (i) The director shall prescribe procedures for the
36 issuance of a notice of violation with respect to violations
37 having only a minimal relationship to safety or health.

38 (j) Actions brought under this chapter shall be set for
39 trial at the earliest possible date and shall take
40 precedence on the court calendar over all other cases

1 except matters to which equal or superior precedence is
2 specifically granted by law. Times for responsive pleading
3 and for hearing the proceeding shall be set by the judge
4 of the court with the object of securing a decision as to
5 subject matters at the earliest possible time.

6 (k) If the citation is dismissed, the state department
7 shall take action immediately to ensure that the public
8 records reflect in a prominent manner that the citation
9 was dismissed.

10 (l) Penalties paid on violations under this chapter shall
11 be applied against the state department's accounts to
12 offset any costs incurred by the state pursuant to this
13 chapter. Any costs or penalties assessed pursuant to this
14 chapter shall be paid within 30 days of the date the
15 decision becomes final. If a facility does not comply with
16 this requirement, the state department shall withhold
17 any payment under the Medi-Cal program until the debt
18 is satisfied. No payment shall be withheld if the state
19 department determines that it would cause undue
20 hardship to the facility or to patients or residents of the
21 facility.

22 (m) The amendments made to subdivisions (a) and
23 (c) of this section by Chapter 84 of the Statutes of 1988,
24 to extend the number of days allowed for the provision of
25 notification to the director, do not affect the right, that is
26 also contained in those amendments, to request judicial
27 relief from these time limits.

28 *SEC. 17. Section 1437 of the Health and Safety Code*
29 *is amended to read:*

30 1437. If a health facility, or an applicant for a license
31 has not been previously licensed pursuant to Chapter 2
32 (commencing with Section 1250), the state department
33 may only provisionally license the facility as provided in
34 this section. A provisional license to operate a health
35 facility shall terminate six months from the date of
36 issuance. Within 30 days of the termination of a
37 provisional license, the state department shall give the
38 facility a full and complete inspection, and, if the facility
39 meets all applicable requirements for licensure, a regular
40 license shall be issued. If the health facility does not meet

1 the requirements for licensure but has made substantial
2 progress towards meeting the requirements, as
3 determined by the state department, the initial
4 provisional license shall be renewed for six months. If the
5 state department determines that there has not been
6 substantial progress towards meeting licensure
7 requirements at the time of the first full inspection
8 provided by this section, or, if the state department
9 determines upon its inspection made within 30 days of the
10 termination of a renewed provisional license that there is
11 lack of full compliance with the requirements, no further
12 license shall be issued.

13 If an applicant for a provisional license to operate a
14 health facility has been denied provisional licensing by
15 the state department, he or she may contest the denial by
16 filing a ~~statement of issues, as provided in Section 11504~~
17 ~~of the Government Code, and the proceedings to review~~
18 ~~the denial shall be conducted pursuant to Chapter 5~~
19 ~~(commencing with Section 11500) of Part 1 of Division 3~~
20 ~~of Title 2 of the Government Code request for a hearing~~
21 ~~pursuant to Section 100171.~~

22 The department shall not apply less stringent criteria
23 when granting a provisional license pursuant to this
24 section than it applies when granting a permanent
25 license.

26 General acute care hospitals and acute psychiatric
27 hospitals are exempt from this section.

28 *SEC. 18. Section 1615 of the Health and Safety Code*
29 *is amended to read:*

30 1615. (a) A license shall be automatically revoked
31 when there is a change of address, ownership, or person
32 in charge of biologics production. However, a new license
33 may be secured for the new location, owner, or person in
34 charge prior to the actual change, ~~provided if~~ the
35 contemplated change is in compliance with all the
36 provisions of this chapter; and regulations pertaining
37 thereto.

38 (b) Proceedings for denial of license shall be
39 conducted in accordance with ~~Chapter 5 (commencing~~

1 ~~with Section 11500), Part 1, Division 3, Title 2 of the~~
2 ~~Government Code Section 100171.~~

3 *SEC. 19. Section 1618 of the Health and Safety Code*
4 *is amended to read:*

5 1618. (a) Licenses shall be suspended or revoked by
6 the department for the violation of any provision of this
7 chapter, or of any rule or regulation made by the
8 department under authority conferred by this chapter.
9 The proceedings shall be conducted in accordance with
10 ~~Chapter 5 (commencing with Section 11500), Part 1,~~
11 ~~Division 3, Title 2 of the Government Code, and the~~
12 ~~department shall have all the powers granted therein~~
13 ~~Section 100171.~~

14 (b) Licenses may be denied for any reason applicable
15 to revocation and suspension of licenses.

16 (c) District and city attorneys shall prosecute
17 violations of this chapter upon evidence of violations
18 within their respective jurisdictions submitted by the
19 department.

20 *SEC. 20. Section 1639.4 of the Health and Safety Code*
21 *is amended to read:*

22 1639.4. Immediately upon the denial of any
23 application for a license, the state department shall notify
24 the applicant in writing. Within 20 days after the state
25 department mails the notice, the applicant may present
26 a written petition for a hearing to the state department.
27 Upon receipt by the state department of the petition in
28 proper form, the petition shall be set for hearing. The
29 proceedings shall be conducted in accordance with
30 ~~Chapter 5 (commencing with Section 11500) of Part 1 of~~
31 ~~Division 3 of Title 2 of the Government Code Section~~
32 ~~100171.~~

33 *SEC. 21. Section 1643.1 of the Health and Safety Code*
34 *is amended to read:*

35 1643.1. Proceedings for the suspension or revocation
36 of licenses under this chapter shall be conducted in
37 accordance with ~~Chapter 5 (commencing with Section~~
38 ~~11500) of Part 1 of Division 3 of Title 2 of the Government~~
39 ~~Code, and the state department shall have all the powers~~
40 ~~granted therein Section 100171.~~

1 *SEC. 22. Section 1728.2 of the Health and Safety Code*
2 *is amended to read:*

3 1728.2. (a) If a home health agency or an applicant
4 for a license has not been previously licensed, the state
5 department may only issue a provisional license to the
6 agency as provided in this section.

7 (b) A provisional license to operate a home health
8 agency shall terminate six months from the date of
9 issuance.

10 (c) Within 30 days prior to the termination of a
11 provisional license, the state department shall give the
12 agency a full and complete inspection, and, if the agency
13 meets all applicable requirements for licensure, a regular
14 license shall be issued. If the home health agency does not
15 meet the requirements for licensure but has made
16 substantial progress towards meeting the requirements,
17 as determined by the state department, the initial
18 provisional license shall be renewed for six months.

19 (d) If the state department determines that there has
20 not been substantial progress towards meeting licensure
21 requirements at the time of the first full inspection
22 provided by this section, or, if the state department
23 determines upon its inspection made within 30 days of the
24 termination of a renewed provisional license that there is
25 lack of full compliance with the requirements, no further
26 license shall be issued.

27 (e) If an applicant for a provisional license to operate
28 a home health agency has been denied provisional
29 licensing by the state department, the applicant may
30 contest the denial by filing a ~~statement of issues, as~~
31 ~~provided in Section 11504 of the Government Code, and~~
32 ~~the proceedings to review denial shall be conducted~~
33 ~~pursuant to Chapter 5 (commencing with Section 11500)~~
34 ~~of Part 1 of Division 3 of Title 2 of the Government Code~~
35 *request for a hearing pursuant to Section 100171.*

36 (f) The department shall not apply less stringent
37 criteria when granting a provisional license pursuant to
38 this section than it applies when granting a permanent
39 license.

1 *SEC. 23. Section 1736 of the Health and Safety Code*
2 *is amended to read:*

3 1736. Proceedings for the denial, suspension or
4 revocation of licenses or denial or withdrawal of approval
5 under this chapter shall be conducted in accordance with
6 ~~the provisions of Chapter 5 (commencing with Section~~
7 ~~11500) of Part 1 of Division 3 of Title 2 of the Government~~
8 ~~Code, and the state department shall have all the powers~~
9 ~~granted therein. In case of conflict between the~~
10 ~~provisions of this chapter and the provisions of Chapter~~
11 ~~5 (commencing with Section 11500), the latter provisions~~
12 ~~shall prevail.~~ *Section 100171.*

13 The suspension, expiration, or forfeiture by operation
14 of law of a license issued by the state department, ~~or~~; its
15 suspension, forfeiture, or cancellation by order of the
16 state department or by order of a court of law;; or its
17 surrender without the written consent of the state
18 department, shall not deprive the state department of its
19 authority to institute or continue a disciplinary
20 proceeding against the licensee upon any ground
21 provided by law or to enter an order suspending or
22 revoking the license or otherwise taking disciplinary
23 action against the licensee on any such ground.

24 *SEC. 24. Section 1736.5 of the Health and Safety Code*
25 *is amended to read:*

26 1736.5. (a) The state department shall deny a
27 training application and deny, suspend, or revoke a
28 certificate issued under this article if the applicant or
29 certificate holder has been convicted of a violation or
30 attempted violation of any of the following Penal Code
31 provisions: Section 187, subdivision (a) of Section 192,
32 Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222,
33 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive,
34 Section 273a, 273.5, or 285, subdivisions (c), (d), (f), and
35 (g) of Section 286, Section 288, subdivisions (c), (d), (f),
36 and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451,
37 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive,
38 Section 487, 503, or 518, unless any of the following apply:

39 (1) The person was convicted of a felony and has
40 obtained a certificate of rehabilitation under Chapter 3.5

1 (commencing with Section 4852.01) of Title 6 of the Penal
2 Code and the information or accusation against him or
3 her has been dismissed pursuant to Section 1203.4 of the
4 Penal Code.

5 (2) The person was convicted of a misdemeanor and
6 the information or accusation against him or her has been
7 dismissed pursuant to Section 1203.4 or 1203.4a of the
8 Penal Code.

9 (3) The certificate holder was convicted of a felony or
10 a misdemeanor, but has previously disclosed the fact of
11 each conviction to the department, and the department
12 has made a determination in accordance with law that the
13 conviction does not disqualify the applicant from
14 certification.

15 (b) An application or certificate shall be denied,
16 suspended, or revoked upon conviction in another state
17 of an offense that, if committed or attempted in this state,
18 would have been punishable as one or more of the
19 offenses set forth in subdivision (a), unless evidence of
20 rehabilitation comparable to the certificate of
21 rehabilitation or dismissal of a misdemeanor set forth in
22 paragraph (1) or (2) of subdivision (a) is provided.

23 (c) The state department may deny an application or
24 deny, suspend, or revoke a certificate issued under this
25 article for any of the following:

26 (1) Unprofessional conduct, including, but not limited
27 to, incompetence, gross negligence, physical, mental, or
28 verbal abuse of patients, or misappropriation of property
29 of patients or others.

30 (2) Conviction of a crime substantially related to the
31 qualifications, functions, and duties of a home health aide,
32 irrespective of a subsequent order under Section 1203.4,
33 1203.4a, or 4852.13 of the Penal Code, where the state
34 department determines that the applicant or certificate
35 holder has not adequately demonstrated that he or she
36 has been rehabilitated and will present a threat to the
37 health, safety, or welfare of patients.

38 (3) Conviction for, or use of, any controlled substance
39 as defined in Division 10 (commencing with Section
40 11000), or any dangerous drug, as defined in Article 7

1 (commencing with Section 4211) of Chapter 9, or
2 alcoholic beverages, to an extent or in a manner
3 dangerous or injurious to the home health aide, any other
4 person, or the public, to the extent that this use would
5 impair the ability to conduct, with safety to the public, the
6 practice authorized by a certificate.

7 (4) Procuring a home health aide certificate by fraud
8 or misrepresentation, or mistake.

9 (5) Making or giving any false statement or
10 information in conjunction with the application for
11 issuance of a home health aide certificate or training and
12 examination application.

13 (6) Impersonating any applicant, or acting as proxy for
14 an applicant, in any examination required under this
15 article for the issuance of a certificate.

16 (7) Impersonating another home health aide, a
17 licensed vocational nurse, or a registered nurse, or
18 permitting or allowing another person to use a certificate
19 for the purpose of providing nursing services.

20 (8) Violating or attempting to violate, directly or
21 indirectly, or assisting in or abetting the violation of, or
22 conspiring to violate any provision or term of, this article.

23 (d) When the state department determines that a
24 certificate shall be suspended, the state department shall
25 specify the period of actual suspension. The state
26 department may determine that the suspension shall be
27 stayed, placing the certificate holder on probation with
28 specified conditions for a period not to exceed two years.
29 When the state department determines that probation is
30 the appropriate action, the certificate holder shall be
31 notified that in lieu of the state department proceeding
32 with a formal action to suspend the certification and in
33 lieu of an appeal pursuant to subdivision (g), the
34 certificate holder may request to enter into a diversion
35 program agreement. A diversion program agreement
36 shall specify terms and conditions related to matters,
37 including, but not limited to, work performance,
38 rehabilitation, training, counseling, progress reports, and
39 treatment programs. If a certificate holder successfully
40 completes a diversion program, no action shall be taken

1 upon the allegations that were the basis for the diversion
2 agreement. Upon failure of the certificate holder to
3 comply with the terms and conditions of an agreement,
4 the state department may proceed with a formal action
5 to suspend or revoke the certification.

6 (e) A plea or verdict of guilty, or a conviction following
7 a plea of nolo contendere, shall be deemed a conviction
8 within the meaning of this article. The state department
9 may deny an application or deny, suspend, or revoke a
10 certification based on a conviction as provided in this
11 article when the judgment of conviction is entered or
12 when an order granting probation is made suspending
13 the imposition of sentence.

14 (f) Upon determination to deny an application or
15 deny, revoke, or suspend a certificate, the state
16 department shall notify the applicant or certificate
17 holder in writing by certified mail of all of the following:

18 (1) The reasons for the determination.

19 (2) The applicant's or certificate holder's right to
20 appeal the determination if the determination was made
21 under subdivision (c).

22 (g) (1) Upon written notification that the state
23 department has determined that an application shall be
24 denied or a certificate shall be denied, suspended, or
25 revoked under subdivision (c), the applicant or
26 certificate holder may request an administrative hearing
27 by submitting a written request to the state department
28 within 20 business days of receipt of the written
29 notification. ~~Notwithstanding Chapter 5 (commencing~~
30 ~~with Section 11500) of Part 1 of Division 3 of Title 2 of the~~
31 ~~Government Code, upon~~ Upon receipt of a written
32 request, the state department shall hold an
33 administrative hearing ~~providing the applicant or~~
34 ~~certificate holder with all of the following:~~

35 ~~(A) The opportunity to present his or her position,~~
36 ~~orally or in writing, with or without legal representation.~~

37 ~~(B) The opportunity to subpoena and cross-examine~~
38 ~~witnesses pursuant to procedures specified in Section~~
39 ~~100171, except insofar as those procedures are~~
40 ~~inconsistent with this section.~~

1 (2) ~~Hearings~~ A *hearing* under this section shall be
2 conducted by ~~a hearing officers~~ *officer or administrative*
3 *law judge* designated by the director at a location other
4 than the work facility convenient to the applicant or
5 certificate holder. The hearing shall be tape recorded and
6 a written decision shall be sent by certified mail to the
7 applicant or certificate holder within 30 calendar days of
8 the hearing. Except as specified in subdivision (h), the
9 effective date of an action to revoke or suspend a
10 certificate shall be specified in the written decision, or if
11 no administrative hearing is timely requested, the
12 effective date will be 21 business days from written
13 notification of the department's determination to revoke
14 or suspend.

15 (h) The state department may revoke or suspend a
16 certificate prior to any hearing when immediate action is
17 necessary in the judgment of the director to protect the
18 public welfare. Notice of this action, including a
19 statement of the necessity of immediate action to protect
20 the public welfare, shall be sent in accordance with
21 subdivision (f). If the certificate holder requests an
22 administrative hearing pursuant to subdivision (g), the
23 state department shall hold the administrative hearing as
24 soon as possible but not later than 30 calendar days from
25 receipt of the request for a hearing. A written hearing
26 decision upholding or setting aside the action shall be sent
27 by certified mail to the certificate holder within 30
28 calendar days of the hearing.

29 (i) Upon the expiration of the term of suspension, he
30 or she shall be reinstated by the state department and
31 shall be entitled to resume practice unless it is established
32 to the satisfaction of the state department that the person
33 has practiced as a home health aide in California during
34 the term of suspension. In this event, the state
35 department shall revoke the person's certificate.

36 (j) Upon a determination to deny an application or
37 deny, revoke, or suspend a certificate, the department
38 shall notify the employer of the applicant or certificate
39 holder in writing of that determination, and whether the
40 determination is final, or whether a hearing is pending

1 relating to this determination. If a licensee or facility is
2 required to deny employment or terminate employment
3 of the employee based upon notice from the state that the
4 employee is determined to be unsuitable for employment
5 under this section, the licensee or facility shall not incur
6 criminal, civil, unemployment insurance, workers'
7 compensation, or administrative liability as a result of that
8 denial or termination.

9 *SEC. 25. Section 100171 is added to the Health and*
10 *Safety Code, to read:*

11 *100171. Notwithstanding any other provision of law,*
12 *whenever the department is authorized or required by*
13 *statute, regulation, due process (Fourteenth*
14 *Amendment, United State Constitution; subdivision (a)*
15 *of Section 7 of Article I, California Constitution), or a*
16 *contract, to conduct an adjudicative hearing leading to a*
17 *final decision of the director or the department, the*
18 *following shall apply:*

19 *(a) The proceeding shall be conducted pursuant to the*
20 *administrative adjudication provisions of Chapter 4.5*
21 *(commencing with Section 11400) and Chapter 5*
22 *(commencing with Section 11500) of Part 1 of Division 3*
23 *of Title 2 of the Government Code, except as specified in*
24 *this section.*

25 *(b) Notwithstanding Section 11502 of the*
26 *Government Code, whenever the department conducts*
27 *a hearing under Chapter 4.5 (commencing with Section*
28 *114000) or Chapter 5 (commencing with Section 11500)*
29 *of Part 1 of Division 3 of Title 2 of the Government Code,*
30 *the hearing shall be conducted before an administrative*
31 *law judge selected by the department and assigned to a*
32 *hearing office that complies with the procedural*
33 *requirements of Chapter 4.5 (commencing with Section*
34 *11400) of Part 1 of Division 3 of Title 2 of the Government*
35 *Code.*

36 *(c) Notwithstanding Section 11508 of the Government*
37 *Code, whenever the department conducts a hearing*
38 *under Chapter 4.5 (commencing with Section 11400) or*
39 *Chapter 5 (commencing with Section 11500) of Part 1 of*
40 *Division 3 of Title 2 of the Government Code, the time*

1 and place of the hearing shall be determined by the staff
2 assigned to the hearing office of the department, unless
3 the department by regulation specifies otherwise.

4 (d) Notwithstanding subdivision (d) of Section 11512
5 of the Government Code, the proceedings described in
6 this section may be reported or recorded in any manner
7 specified by the director that is capable of producing an
8 adequate record of the proceedings for judicial review.

9 (e) (1) The following sections of the Government
10 Code shall apply to any adjudicative hearing conducted
11 by the department only if the department has not, by
12 regulation, specified an alternative procedure for the
13 particular type of hearing at issue: Section 11503 (relating
14 to accusations), Section 11504 (relating to statements of
15 issues), Section 11505 (relating to the contents of the
16 statement to respondent), Section 11506 (relating to the
17 notice of defense), Section 11507.6 (relating to discovery
18 rights and procedures), Section 11508 (relating to the
19 time and place of hearings), and Section 11516 (relating
20 to amendment of accusations).

21 (2) Any alternative procedure specified by the
22 department in accordance with this subdivision shall
23 conform to the purpose of the Government Code
24 provision it replaces insofar as it is possible to do so
25 consistent with the specific procedural requirements
26 applicable to the type of hearing at issue.

27 (3) Any alternative procedures adopted by the
28 department under this subdivision shall not diminish the
29 amount of notice given of the issues to be heard by the
30 department or deprive appellants of the right to
31 discovery suitable to the particular proceedings.
32 Modifications of time frames or of the place of hearing
33 made by regulation may not lengthen time frames within
34 which the department is required to act nor require
35 hearings to be held at a greater distance from the
36 appellant's place of residence or business than is the case
37 under the otherwise applicable Government Code
38 provision.

39 (f) The specific time lines specified in Section 11517 of
40 the Government Code shall not apply to any adjudicative

1 *hearing conducted by the department to the extent that*
2 *the department has, by regulation, specified different*
3 *time lines for the particular type of hearing at issue.*

4 *(g) In the case of any adjudicative hearing conducted*
5 *by the department, "transcript," as used in subdivision*
6 *(c) of Section 11517 of the Government Code, shall be*
7 *deemed to include any alternative form of recordation of*
8 *the oral proceedings, including, but not limited to, an*
9 *audiotape.*

10 *(h) Pursuant to Section 11415.50 of the Government*
11 *Code, the department may, by regulation, provide for*
12 *any appropriate informal procedure to be used for an*
13 *informal level of review that does not itself lead to a final*
14 *decision of the department or the director. The*
15 *procedures specified in Article 10 (commencing with*
16 *Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of*
17 *Title 2 of the Government Code shall not apply to any*
18 *such an informal level of review.*

19 *(i) Notwithstanding any other provision of law, any*
20 *adjudicative hearing conducted by the department that*
21 *is conducted pursuant to a federal statutory or regulatory*
22 *requirement that contains specific procedures may be*
23 *conducted pursuant to those procedures to the extent*
24 *they are inconsistent with the procedures specified in this*
25 *section.*

26 *(j) Nothing in this section shall apply to a fair hearing*
27 *involving a Medi-Cal beneficiary insofar as the hearing is,*
28 *by agreement or otherwise, heard before an*
29 *administrative law judge employed by the State*
30 *Department of Social Services.*

31 *(k) Nothing in this provision shall supersede express*
32 *provisions of law that apply to any hearing that is not*
33 *adjudicative in nature or that does not involve due*
34 *process rights specific to an individual or specific*
35 *individuals, as opposed to the general public or a segment*
36 *of the general public.*

37 *SEC. 26. Section 106715 of the Health and Safety Code*
38 *is amended to read:*

39 *106715. (a) Notwithstanding any other provisions of*
40 *this article, the department upon the recommendation of*

1 the committee may suspend, deny, refuse to renew, or
2 revoke a registration certificate issued under ~~the~~
3 ~~provisions of~~ this article after sufficient notice and an
4 opportunity for a hearing and upon findings that the
5 registered environmental health specialist has *done any*
6 *of the following*:

7 (1) Knowingly made a false statement of fact required
8 to be revealed in the application for registration.

9 (2) Been convicted of a crime, if the crime is related
10 to the qualifications, functions, and duties of an
11 environmental health specialist.

12 (3) Knowingly made a false statement of fact required
13 to be revealed in an application for, or renewal of,
14 registration.

15 (4) Committed an act of deceit, misrepresentation,
16 violation of contract, fraud, negligence, professional
17 incompetence, or unethical practice.

18 (b) The procedure to deny, suspend, refuse to renew,
19 or revoke an environmental health specialist registration
20 certificate pursuant to this section shall be as follows:

21 (1) All cases, complaints, or allegations charging a
22 violation of this subdivision shall be made in writing and
23 submitted to the department.

24 (2) The department shall make a preliminary
25 investigation by:

26 (A) Obtaining copies of all pertinent written
27 documents (laws, reports, contacts, and
28 correspondence).

29 (B) Interviewing, in person or by telephone, of all
30 individuals involved with the issue.

31 (3) The department shall compile the information into
32 a confidential case document that includes *the following*:

33 (A) A description of the complaint.

34 (B) A chronology of events.

35 (C) Results of the interviews.

36 (D) Copies of the written documents.

37 (4) The case document shall be submitted to each
38 member of the committee requesting their
39 recommendation whether or not the information
40 warrants further investigation and an informal hearing.

(5) The department shall review committee recommendations and the preliminary investigation findings and then decide whether to dismiss the complaint or proceed to an informal committee hearing. Dismissal of the charges shall be followed by a letter to both complainant and the registered environmental health specialist involved explaining the department's action.

(6) If the decision is made to proceed with an informal hearing, the department shall request the committee to appoint one or more hearing officers to hear the case.

(A) All parties shall be notified of the time and place of the hearing.

(B) An investigation of the issue may be made by an independent professional investigator if it is felt warranted by the department and the committee. The investigation results shall be submitted to the department, committee hearing officers, complainant, and respondent prior to the hearing.

(C) The informal hearing shall permit the right to be heard (with an attorney, if desired) and the proceedings recorded. *Such a hearing shall be considered an informal level of review and shall be governed by subdivision (h) of Section 100171.*

(D) Upon the finding that a violation of this section occurred, the following disciplinary ranges may be recommended to the department by *the committee and may be adopted by the department if the respondent does not timely request further review as specified in subdivision (d):*

(i) Knowingly made a false statement of fact required to be revealed in the application for registration.

(I) Maximum: Revocation.

(II) Minimum: Fifteen-day suspension. Range depends on whether or not the registration was falsely approved.

(ii) Been convicted of a crime, if the crime is related to the qualifications, functions, and duties of a registered environmental health specialist.

1 (I) Maximum: Deny, refuse to renew, or revocation of
2 registration.

3 (II) Minimum: Ninety days actual suspension.

4 (iii) Knowingly made a false statement of fact
5 required to be revealed in an application for, or renewal
6 of registration.

7 (I) Maximum: Revocation.

8 (II) Minimum: Seven day actual suspension.

9 (iv) Committed an act of deceit, misrepresentation,
10 violation of contract, fraud, negligence, professional
11 incompetence, or unethical practice.

12 (I) Maximum: Revocation.

13 (II) Minimum: Ninety days suspension stayed for
14 three years on the following conditions of probation.

15 —Forty-five days actual suspension.

16 —The respondent shall obey all laws and regulations
17 related to the practice of environmental health.

18 ~~(c) Department action to implement denial,~~
19 ~~suspension, refusal to renew, or revocation of registration~~
20 ~~under this chapter shall be in accordance with Chapter~~
21 ~~5 (commencing with Section 11500) of Part 1 of Division~~
22 ~~3 of Title 2 of the Government Code, and the department~~
23 ~~shall have all the powers granted by that chapter. In the~~
24 ~~event of conflict between that chapter and this article,~~
25 ~~Chapter 5 shall prevail. A copy of the recommendation~~
26 ~~made to the department by the committee shall be~~
27 ~~transmitted to the respondent within 10 calendar days of~~
28 ~~its receipt by the department.~~

29 *(d) The respondent may request further review of the*
30 *recommendation resulting from the informal level of*
31 *review by sending a letter so stating to the address*
32 *specified in the letter transmitting the recommendation.*
33 *To be timely, the request shall be postmarked no later*
34 *than 15 calendar days after receipt by the respondent of*
35 *the recommendation at issue. Upon receiving a timely*
36 *request for review, the department shall set the matter*
37 *for hearing pursuant to Section 100171.*

38 SEC. 27. Section 108900 of the Health and Safety Code
39 is amended to read:

1 108900. (a) The department may impose a civil
2 penalty payable to the department upon any person who
3 violates ~~any provision of~~ this chapter or any regulation
4 adopted pursuant to this chapter in the amount of not
5 more than five thousand dollars (\$5,000) per day. Each
6 day a violation continues shall be considered a separate
7 violation.

8 (b) If, after examination of a possible violation and the
9 facts surrounding that possible violation, the department
10 concludes that a violation has occurred, the department
11 may issue a complaint to the person charged with the
12 violation. The complaint shall allege the acts or failures to
13 act that constitute the basis for the violation and the
14 amount of the penalty. The complaint shall be served by
15 personal service or by certified mail and shall inform the
16 person so served of the right to a hearing.

17 (c) Any person served with a complaint pursuant to
18 subdivision (c) may, within 20 days after service of the
19 complaint, request a hearing by filing with the
20 department a notice of defense. A notice of defense is
21 deemed to have been filed within the 20-day period if it
22 is postmarked within the 20-day period. If a hearing is
23 requested by the person, it shall be conducted within 90
24 days after the receipt by the department of the notice of
25 defense. If no notice of defense is filed within 20 days after
26 service of the complaint, the department shall issue an
27 order setting the penalty as proposed in the complaint
28 unless the department and the person have entered into
29 a settlement agreement, in that case the department shall
30 issue an order setting the penalty in the amount specified
31 in the settlement agreement. When the person has not
32 filed a notice of defense or where the department and the
33 person have entered into a settlement agreement, the
34 order shall not be subject to review by any court or
35 agency.

36 (d) Any hearing required under this section shall be
37 conducted ~~by a departmental hearing officer appointed~~
38 ~~by the director. The department shall adopt regulations~~
39 ~~establishing a hearing process to review complaints. Until~~
40 ~~the department adopts these regulations, all hearings~~

~~1 shall be conducted in accordance with Chapter 5
2 (commencing with Section 11500) of Part 1 of Division 3
3 of Title 2 of the Government Code, except that hearings
4 shall be conducted by a departmental hearing officer
5 appointed by the director. The department shall have all
6 the powers granted in that chapter pursuant to Section
7 100171, except to the extent that the procedures specified
8 in Section 100171 are inconsistent with this section.~~

9 (e) Orders setting civil penalties under this section
10 shall become effective and final upon issuance thereof,
11 and payment shall be made within 30 days of issuance. A
12 copy of the order shall be served by personal service or
13 by certified mail upon the person served with the
14 complaint.

15 (f) Within 30 days after service of a copy of a decision
16 issued by the director *after a hearing*, any person so
17 served may file with the superior court a petition for writ
18 of mandate for review of the decision. Any person who
19 fails to file the petition within this 30-day period may not
20 challenge the reasonableness or validity of the decision or
21 order of the director in any judicial proceeding brought
22 to enforce the decision or order or for other remedies.
23 Section 1094.5 of the Code of Civil Procedure shall govern
24 any proceedings conducted pursuant to this subdivision.
25 In all proceedings pursuant to this subdivision, the court
26 shall uphold the decision of the director if the decision is
27 based upon substantial evidence in the whole record. The
28 filing of a petition for writ of mandate shall not stay any
29 corrective action required pursuant to this chapter or the
30 accrual of any penalties assessed pursuant to this section.
31 This subdivision does not prohibit the court from granting
32 any appropriate relief within its jurisdiction.

33 (g) The remedies under this section are in addition to,
34 and do not supersede, or limit, any and all other remedies,
35 civil or criminal.

36 (h) If the violation is committed after a previous
37 imposition of a penalty under this section that has become
38 final, ~~or~~ if the violation is committed with intent to
39 mislead or defraud, or if the violation concerns tableware
40 primarily used by children or marketed for children, the

1 person shall be subject to imprisonment for not more than
2 one year in the county jail or imprisonment in state
3 prison, ~~or~~ by a fine of not more than ten thousand dollars
4 (\$10,000), or by both the imprisonment and fine.

5 *SEC. 28. Section 111645 of the Health and Safety Code*
6 *is amended to read:*

7 111645. Any violation of any provision of this part or
8 any regulation adopted pursuant to this part shall be
9 grounds for denying a license or for suspending or
10 revoking a license. Proceedings for the denial,
11 suspension, or revocation of a license shall be conducted
12 ~~in accordance with Chapter 5 (commencing with Section~~
13 ~~11500) of Part 1 of Division 3 of Title 2 of the Government~~
14 ~~Code, and the department shall have all the powers~~
15 ~~granted in that chapter pursuant to Section 100171.~~

16 *SEC. 29. Section 115145 of the Health and Safety Code*
17 *is amended to read:*

18 115145. (a) In any proceeding under this chapter for
19 granting or amending any license, or for determining
20 compliance with, or granting exceptions from,
21 regulations adopted in accordance with this chapter, the
22 department shall afford an opportunity for a hearing on
23 the record upon the request of any person whose interest
24 may be affected by the proceeding, and shall admit that
25 person as a party to the proceeding.

26 (b) Proceedings for the suspension or revocation of
27 licenses under this chapter shall be conducted ~~in~~
28 ~~accordance with Chapter 5 (commencing with Section~~
29 ~~11500) of Part 1 of Division 3 of Title 2 of the Government~~
30 ~~Code, and the department shall have all the powers~~
31 ~~granted therein pursuant to Section 100171.~~

32 (c) The adoption, repeal, or amendment of
33 regulations pursuant to this chapter shall be
34 accomplished in conformity with Chapter 3.5
35 (commencing with Section 11340) of Part 1 of Division 3
36 of Title 2 of the Government Code.

37 *SEC. 30. Section 116425 of the Health and Safety Code*
38 *is amended to read:*

39 116425. (a) The department may exempt any public
40 water system from any maximum contaminant level or

1 treatment technique requirement if it finds all the
2 following:

3 (1) The public water system was in operation, or had
4 applied for a permit to operate, on the effective date of
5 the maximum contaminant level or treatment technique
6 requirement.

7 (2) Due to compelling factors, which may include
8 economic factors, the public water system is unable to
9 comply with the maximum contaminant level or
10 treatment technique requirement.

11 (3) The granting of the exemption will not result in an
12 unreasonable risk to health.

13 (b) If the department grants a public water system an
14 exemption for a primary drinking water standard under
15 subdivision (a), the department shall prescribe, at the
16 time an exemption is granted, a schedule for both of the
17 following:

18 (1) Compliance by the public water system with each
19 contaminant level or treatment technique requirement
20 for which the exemption was granted.

21 (2) Implementation by the public water system of
22 interim control measures the department may require
23 for each contaminant or treatment technique
24 requirement for which the exemption was granted.

25 (c) Any schedule prescribed by the department
26 pursuant to this section shall require compliance by the
27 public water system with each contaminant level or
28 treatment technique requirement for which the
29 exemption was granted within 12 months from the
30 granting of the exemption.

31 (d) The final date for compliance with any schedule
32 issued pursuant to this section may be extended by the
33 department for a period not to exceed three years from
34 the date of the granting of the exemption if the
35 department finds all of the following:

36 (1) The system cannot meet the standard without
37 capital improvements that cannot be completed within
38 the period of the exemption.

39 (2) In the case of a system that needs financial
40 assistance for the necessary improvements, the system

1 has entered into an agreement to obtain the financial
2 assistance or the system has entered into an enforceable
3 agreement to become part of a regional public water
4 system.

5 (3) The system is taking all practicable steps to meet
6 the standard.

7 (e) In the case of a system that does not serve more
8 than 500 service connections and that needs financial
9 assistance for the necessary improvements, an exemption
10 granted pursuant to paragraph (2) of subdivision (d) may
11 be renewed for one or more additional two-year periods
12 if the system establishes that it is taking all practicable
13 steps to meet the requirements of subdivision (d).

14 (f) Prior to the granting of an exemption pursuant to
15 this section, the department shall provide notice and an
16 opportunity for a public hearing. Notice of any public
17 hearing held pursuant to this section shall be given by the
18 department in writing to the public water system seeking
19 the exemption and to the public as provided in Section
20 6061 of the Government Code. *A public hearing provided*
21 *pursuant to this subdivision is not an adjudicative hearing*
22 *and is not required to comply with Section 100171.*

23 *SEC. 31. Section 116625 of the Health and Safety Code*
24 *is amended to read:*

25 116625. (a) The department, after a hearing noticed
26 and conducted as provided in Section ~~11500 of the~~
27 ~~Government Code 100171~~, may suspend or revoke any
28 permit issued pursuant to this chapter if the department
29 determines pursuant to the hearing that the permittee is
30 not complying with the permit, this chapter, or any
31 regulation, standard, or order issued or adopted
32 thereunder, or that the permittee has made a false
33 statement or representation on any application, record,
34 or report maintained or submitted for purposes of
35 compliance with this chapter. *If the permit at issue has*
36 *been temporarily suspended pursuant to subdivision (c),*
37 *the accusation shall be served and notice of the hearing*
38 *date given within 15 days of the effective date of the*
39 *temporary suspension order. The commencement of the*
40 *hearing shall be as soon as practicable, but in no case later*

1 *than 60 days after the effective date of the temporary*
2 *suspension order.*

3 (b) The permittee may file with the superior court a
4 petition for a writ of mandate for review of any decision
5 of the department made pursuant to subdivision (a).
6 Failure to file a petition shall not preclude a party from
7 challenging the reasonableness or validity of a decision of
8 the department in any judicial proceeding to enforce the
9 decision or from pursuing any remedy authorized by this
10 chapter.

11 (c) The department may temporarily suspend any
12 permit issued pursuant to this chapter prior to any
13 hearing when the action is necessary to prevent an
14 imminent or substantial danger to health. The director
15 shall notify the permittee of the temporary suspension
16 and the effective date thereof and, at the same time,
17 notify the permittee that a hearing has been scheduled.
18 The hearing shall be held as soon as possible, but not later
19 than 15 days after the effective date of the temporary
20 suspension *and shall deal only with the issue of whether*
21 *the temporary suspension shall remain in place pending*
22 *a hearing on the merits.* The temporary suspension shall
23 remain in effect until the hearing is completed and the
24 director has made a final determination on the ~~merits~~
25 *temporary suspension*, that in any event shall be made
26 within 15 days after the completion of the hearing. If the
27 determination is not transmitted within 15 days after the
28 hearing is completed, the temporary suspension shall be
29 of no further effect. *Dissolution of the temporary*
30 *suspension does not deprive the department of*
31 *jurisdiction to proceed with a hearing on the merits under*
32 *subdivision (a).*

33 SEC. 32. Section 1953.5 is added to the
34 Unemployment Insurance Code, to read:

35 1953.5. *The presiding officer may conduct all or part*
36 *of a hearing by telephone, television, or other electronic*
37 *means, notwithstanding a party's objection pursuant to*
38 *Section 11440.30 of the Government Code, on a showing*
39 *of good cause by the party requesting the hearing by*
40 *telephone, television, or other electronic means.*

1 *SEC. 33. Section 14088.23 of the Welfare and*
2 *Institutions Code is amended to read:*

3 14088.23. (a) The department may apply one or
4 more of the following sanctions against any contractor for
5 failure to comply with the requirements of this article,
6 regulations adopted by the department, the contract
7 between the contractor and the department, or for other
8 good cause shown. Good cause includes, but is not
9 necessarily limited to, three repeated and uncorrected
10 findings of serious deficiencies that have the potential to
11 endanger patient care, as defined by the department in
12 accordance with this section, identified in the medical
13 audits conducted by the department:

14 (1) Terminate the contract.

15 (2) Suspend enrollment and marketing activities.

16 (3) Require the contractor to suspend or terminate
17 personnel of the contractor or to terminate participation
18 by subcontractors specified by the department.

19 (4) Impose civil penalties not to exceed ten thousand
20 dollars (\$10,000) per violation pursuant to regulations
21 adopted by the director. Unless imposed in error,
22 penalties shall not be returned to the plan.

23 (5) Take other appropriate action as determined
24 necessary by the department.

25 (b) The department shall give the contractor and any
26 other persons who may be directly interested not less
27 than 30 days' notice of its intention to impose any of the
28 sanctions authorized by this section.

29 (c) The notice required by subdivision (b) shall be
30 written, and shall specify each requirement that has not
31 been met, the proposed effective date of the sanction or
32 sanctions, and the amount and duration of each proposed
33 sanction.

34 (d) (1) Within five working days after the receipt of
35 the written notice required by subdivision (b), the
36 contractor may submit notice of its intent to comply with
37 the requirements specified in the written notice.

38 (2) If the contractor submits the notice of intent
39 authorized by paragraph (1), the department shall allow
40 the contractor to demonstrate its compliance with the

1 requirements specified in the department's written
2 notice, ~~commencing~~. *Substantial compliance shall be*
3 *achieved* within 30 calendar days from the date of the
4 submission of the notice of intent to comply by the
5 contractor. Within 15 days following the completion of
6 the 30-day compliance correction period, the department
7 shall review the corrective actions taken by the
8 contractor and, if appropriate, approve those actions.

9 (3) If a contractor subject to notice to apply sanctions
10 under subdivision (b) does not demonstrate appropriate
11 corrective compliance within the 30-day corrective
12 action period or does not submit a notice of intent to
13 comply with the requirements specified in the notice
14 required by subdivision (b), the department shall notify
15 the contractor, in writing, of the effective date and terms
16 of the sanction or sanctions applied pursuant to this
17 section.

18 ~~(4) A contractor may appeal sanctions applied~~
19 ~~pursuant to this section to the department within 15~~
20 ~~working days after the notice of the effective date of the~~
21 ~~sanctions has been provided pursuant to paragraph (3);~~
22 ~~setting forth relevant facts and arguments. The~~
23 ~~department shall grant or deny the appeal within 30~~
24 ~~calendar days after receiving the appeal. The department~~
25 ~~may make one or more of the following temporary~~
26 ~~suspension orders as an immediate sanction: temporarily~~
27 ~~suspend enrollment activities, temporarily suspend~~
28 ~~marketing activities, require the contractor temporarily~~
29 ~~to suspend specified personnel of the contractor, or~~
30 ~~require the contractor temporarily to suspend~~
31 ~~participation by a specified subcontractor. The~~
32 ~~temporary suspension orders may be effective beginning~~
33 ~~on the first day after the expiration of the 30-day~~
34 ~~compliance correction period, if the contractor~~
35 ~~submitted a notice of intent to comply, but has not~~
36 ~~demonstrated appropriate corrective action, or~~
37 ~~beginning on the first day after the notice required by~~
38 ~~subdivision (b) if the contractor did not submit a notice~~
39 ~~of intent to comply. All other sanctions shall be effective~~

1 no earlier than 20 days after the notice specified in
2 paragraph (3).

3 (5) If the department issues a temporary suspension
4 order as an immediate sanction, it shall notify the
5 contractor of the nature and effective date of the
6 temporary suspension and at the same time shall serve
7 the provider with an accusation. Upon receipt of a notice
8 of defense filed by the contractor, the department shall,
9 within 15 days, set the matter for hearing, which shall be
10 held as soon as possible, but not later than 30 days after
11 receipt of the notice of hearing by the contractor. The
12 hearing may be continued at the request of the contractor
13 if a continuance is necessary to permit presentation of an
14 adequate defense. The temporary suspension order shall
15 remain in effect until the hearing is completed and the
16 department has made a final determination on the
17 merits. However, the temporary suspension order shall
18 be deemed vacated if the director fails to make a final
19 determination on the merits within 60 days after the
20 original hearing has been completed.

21 (6) A contractor may request a hearing in connection
22 with any sanctions applied pursuant to this section, other
23 than those contained in a temporary suspension order,
24 within 15 working days after the notice of the effective
25 date of the sanctions has been given pursuant to
26 paragraph (3), by sending a letter so stating to the address
27 specified in the notice. The department shall stay
28 implementation of the sanction upon receipt of the
29 request for a hearing. Implementation of the sanction
30 shall remain stayed until the effective date of the final
31 decision of the department.

32 (7) Except as otherwise provided herein, all hearings
33 to review the imposition of sanctions, including
34 temporary suspension orders, shall be held pursuant to
35 the procedures set forth in Section 100171 of the Health
36 and Safety Code and in any regulations adopted pursuant
37 to that section.

38 (e) The department may collect civil penalties
39 imposed pursuant to this section by withholding the

1 amount of the penalty from capitation payments owed by
2 the department to the contractor.

3 *SEC. 34. Section 14123 of the Welfare and Institutions*
4 *Code is amended to read:*

5 14123. Participation in the Medi-Cal program by a
6 provider of service is subject to suspension in order to
7 protect the health of the recipients and the funds
8 appropriated to carry out this chapter.

9 (a) The director may suspend a provider of service
10 from further participation under the Medi-Cal program
11 for violation of any provision of this chapter or Chapter
12 8 (commencing with Section 14200) or any rule or
13 regulation promulgated by the director pursuant to those
14 chapters. Any such suspension may be for an indefinite or
15 specified period of time and with or without conditions or
16 may be imposed with the operation of the suspension
17 stayed or probation granted. The director shall suspend
18 a provider of service for conviction of any felony or any
19 misdemeanor involving fraud, abuse of the Medi-Cal
20 program or any patient, or otherwise substantially related
21 to the qualifications, functions, or duties of a provider of
22 service.

23 If the provider of service is a clinic, group, corporation,
24 or other association, conviction of any officer, director, or
25 shareholder with a 10 percent or greater interest in that
26 organization, of such a crime shall result in the suspension
27 of that organization and the individual convicted if the
28 director believes that suspension would be in the best
29 interest of the Medi-Cal program. If the provider of
30 services is a political subdivision of the state or other
31 government agency, the conviction of the person in
32 charge of the facility of such a crime may result in the
33 suspension of that facility. The record of conviction or a
34 certified copy thereof, certified by the clerk of the court
35 or by the judge in whose court the conviction is had, shall
36 be conclusive evidence of the fact that the conviction
37 occurred. A plea or verdict of guilty, or a conviction
38 following a plea of nolo contendere is deemed to be a
39 conviction within the meaning of this section.

1 After conviction, but before the time for appeal has
2 elapsed or the judgment of conviction has been affirmed
3 on appeal, the director, if he or she believes that
4 suspension would be in the best interests of the Medi-Cal
5 program, may order the suspension of a provider of
6 service. When the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or
8 when an order granting probation is made suspending
9 the imposition of sentence irrespective of any subsequent
10 order under Section 1203.4 of the Penal Code allowing a
11 person to withdraw his or her plea of guilty and to enter
12 a plea of not guilty, or setting aside the verdict of guilty,
13 or dismissing the accusation, information, or indictment,
14 the director shall order the suspension of a provider of
15 service. The suspension shall not take effect earlier than
16 the date of the director's order. Suspension following a
17 conviction is not subject to the proceedings required in
18 subdivision (c). However, the director may grant an
19 informal hearing at the request of the provider of service
20 to determine in the director's sole discretion if the
21 circumstances surrounding the conviction justify
22 rescinding or otherwise modifying the suspension
23 provided for in this subdivision.

24 If the provider of service appeals the conviction and the
25 conviction is reversed, the provider may apply for
26 reinstatement to the Medi-Cal program after the
27 conviction is reversed. Notwithstanding Section 14126.6,
28 the application for reinstatement shall not be subject to
29 the one-year waiting period for the filing of a
30 reinstatement petition pursuant to Section 11522 of the
31 Government Code.

32 (b) Whenever the director receives written
33 notification from the Secretary of the United States
34 Department of Health and Human Services, that a
35 physician or other individual practitioner has been
36 suspended from participation in the Medicare or
37 Medicaid programs, the director shall, promptly suspend
38 the practitioner from participation in the Medi-Cal
39 program. This automatic suspension is not subject to the
40 proceedings required in subdivision (c). No payment

1 from state or federal funds may be made for any item or
2 service rendered by the practitioner during the period of
3 suspension.

4 (c) The proceedings for suspension shall be conducted
5 ~~in accordance with Chapter 5 (commencing with Section~~
6 ~~11500) of Part 1 of Division 3 of Title 2 of the Government~~
7 ~~Code, except that hearings may be conducted by~~
8 ~~departmental hearing officers appointed by the director.~~
9 ~~The director may periodically subcontract with the~~
10 ~~Office of Administrative Hearings to conduct the~~
11 ~~hearings pursuant to Section 100171 of the Health and~~
12 ~~Safety Code.~~ The director may temporarily suspend any
13 provider of service prior to any hearing when in his or her
14 opinion that action is necessary to protect the public
15 welfare or the interests of the Medi-Cal program. The
16 director shall notify the provider of service of the
17 temporary suspension and the effective date thereof and
18 at the same time serve the provider with an accusation.
19 The accusation and all proceedings thereafter shall be in
20 accordance with ~~the sections of the Government Code~~
21 ~~specified in this subdivision~~ *Section 100171 of the Health*
22 *and Safety Code.* Upon receipt of a notice of defense by
23 the provider, the director shall set the matter for hearing
24 within 30 days after receipt of the notice. The temporary
25 suspension shall remain in effect until such time as the
26 hearing is completed and the director has made a final
27 determination on the merits. The temporary suspension
28 shall, however, be deemed vacated if the director fails to
29 make a final determination on the merits within 60 days
30 after the original hearing has been completed. This
31 subdivision does not apply where the suspension of a
32 provider is based upon the conviction of any crime
33 involving fraud, abuse of the Medi-Cal program, or
34 suspension from the federal Medicare program. In those
35 instances, suspension shall be automatic.

36 (d) The suspension by the director of any provider of
37 service shall preclude the provider from submitting
38 claims for payment, either personally or through claims
39 submitted by any clinic, group, corporation, or other
40 association to the Medi-Cal program for any services or

1 supplies the provider has provided under the program,
2 except for services or supplies provided prior to the
3 suspension. No clinic, group, corporation, or other
4 association which is a provider of service shall submit
5 claims for payment to the Medi-Cal program for any
6 services or supplies provided by a person within the
7 organization who has been suspended or revoked by the
8 director, except for services or supplies provided prior to
9 the suspension.

10 Where the provisions of this chapter or Chapter 8
11 (commencing with Section 14200) or the regulations
12 promulgated by the director are violated by a provider of
13 service which is a clinic, group, corporation, or other
14 association, the director may suspend the organization
15 and any individual person within the organization who is
16 responsible for the violation.

17 (e) Notice of the suspension shall be sent by the
18 director to the provider's state licensing, certifying, or
19 registering authority, along with the evidence upon
20 which the suspension was based.

21 (f) In addition to the bases for suspension contained in
22 subdivisions (a) and (b), the director may suspend a
23 provider of service from further participation under the
24 Medi-Cal dental program for the provision of services
25 that are below or less than the standard of acceptable
26 quality, as established by the California Dental
27 Association Guidelines for the Assessment of Clinical
28 Quality and Professional Performance, Copyright 1995,
29 Third Edition, as periodically amended. Any such
30 suspension shall be subject to the requirements contained
31 in subdivisions (a) to (e), inclusive.

32 *SEC. 35. Section 14123.2 of the Welfare and*
33 *Institutions Code is amended to read:*

34 14123.2. Any provider or person that presents or
35 causes to be presented a claim for services to an officer,
36 employee, or agent of the ~~State of California~~ state, or of
37 any department or agency thereof as defined in
38 appropriate state law, that the director determines is for
39 a medical or other item or service that the person knows
40 or has reason to know; (a) was not provided as claimed,

1 or (b) payment for which may not be made under the
2 program in the following instances: (1) when the person
3 or provider has been suspended from participation in the
4 program, or (2) when the department determines that
5 the services or items claimed are substantially in excess of
6 the needs of individuals or are of a quality that fails to
7 meet professionally recognized standards of health care,
8 or (3) when the department determines that a person has
9 demonstrated a pattern of abusive overbilling of the
10 program, or (4) when the department determines that a
11 person has intentionally or negligently made a false
12 statement or representation on any request for payment
13 submitted to the Medi-Cal program; or (c) is submitted
14 in violation of an agreement between the person and the
15 state, shall be subject in addition to any other penalties
16 that may be prescribed by law, to a civil money penalty
17 of not more than three times the amount claimed for each
18 item or service. For continuing intentional violations, a
19 civil money penalty of not more than three times the
20 amount claimed for each item or service may be imposed
21 for each day the violation continues.

22 The director shall make the determination to assess
23 civil money penalties and shall be responsible for the
24 collection of the penalty amounts.

25 The provider or person subjected to a civil money
26 penalty may appeal any decision by the director to assess
27 the penalty *pursuant to Section 100171 of the Health and*
28 *Safety Code and any applicable regulations.*

29 Notwithstanding any other provisions of law, all money
30 collected pursuant to this section shall be deposited in the
31 General Fund on a monthly basis.

32 *SEC. 36. Section 14126.50 of the Welfare and*
33 *Institutions Code is amended to read:*

34 14126.50. Facilities and previous licensees of facilities
35 may appeal the result of any department audit pursuant
36 to this article, as provided in *Section 100171 of the Health*
37 *and Safety Code and regulations adopted by the*
38 *department.*

39 *SEC. 37. Section 14171 of the Welfare and Institutions*
40 *Code is amended to read:*

1 14171. (a) The director shall establish administrative
2 appeal processes to review grievances or complaints
3 arising from the findings of an audit or examination made
4 pursuant to Sections 10722 and 14170 *and for final*
5 *settlements, including, in the case of hospitals, the*
6 *application of Sections 51536, 51537, and 51539 of Title 22*
7 *of the California Code of Regulations. All these processes*
8 *shall be established by regulation, pursuant to, and*
9 *consistent with, Section 100171 of the Health and Safety*
10 *Code.*

11 (b) Different administrative appeal processes may be
12 established by the director for grievances or complaints
13 arising from the determinations of a tentative or final
14 settlement based on audit or examination findings made
15 by or on behalf of the department pursuant to Sections
16 10722 and 14170, ~~except that.~~ *However,* consistent with
17 existing practice, no administrative appeal shall be
18 available for tentative settlement of cost reports.

19 ~~(c) The administrative appeal process established by~~
20 ~~the director for final settlements, including, in the case of~~
21 ~~hospitals, the application of Sections 51536, 51537, and~~
22 ~~51539 of Title 22 of the California Code of Regulations~~
23 ~~shall include the procedural requirements of Chapter 5~~
24 ~~(commencing with Section 11500) of Part 1 of Division 3~~
25 ~~of Title 2 of the Government Code. The impartial hearing~~
26 ~~shall be conducted by an administrative law judge~~
27 ~~appointed by the director. The director may subcontract~~
28 ~~with the Office of Administrative Hearings to conduct~~
29 ~~hearings on cases involving complicated issues of fact or~~
30 ~~law, or to reduce the backlog of cases.~~

31 ~~(d)~~ The administrative appeal process established by
32 the director for tentative settlements, including, in the
33 case of hospitals, the application of Sections 51536, 51537,
34 and 51539 of Title 22 of the California Code of Regulations
35 shall be an informal process which, however, guarantees
36 a provider the right to present any grievance or
37 complaint to the department in writing. Any subsequent
38 hearings shall be conducted in an informal manner and
39 shall be held at the discretion of the department.

40 ~~(e)~~

1 (d) The time limitations in subdivisions ~~(f)~~ (e) and ~~(g)~~
2 (f) for the impartial hearing and the final decisions are
3 mandatory. If the department fails to conduct the hearing
4 or to adopt a final decision thereon within the time
5 limitations provided in subdivisions ~~(f)~~ (e) and ~~(g)~~ (f),
6 the amount of any overpayment which is ultimately
7 determined by the department to be due shall be reduced
8 by 10 percent for each 30-day period, or portion thereof,
9 that the hearing or the decision, or both, are delayed
10 beyond the time limitations provided in subdivisions ~~(f)~~
11 (e) and ~~(g)~~ (f). However, the time period shall be
12 extended by either of the following:

13 (1) Delay caused by a provider.

14 (2) Extensions of time granted a provider at its sole
15 request or at the joint request of the provider and the
16 department.

17 ~~(f) (1) Notwithstanding subdivision (e), the~~

18 (e) (1) The administrative appeal process established
19 by the director shall commence with an informal
20 conference with the provider, a representative of the
21 department, and the administrative law judge. The
22 informal conference shall be conducted no later than 90
23 days after the filing of a timely and specific statement of
24 disputed issues by the provider. The administrative law
25 judge, when appropriate, may assign the administrative
26 appeal to an informal level of review where efforts could
27 be made to resolve facts and issues in dispute in a fair and
28 equitable manner, subject to the requirements of state
29 and federal law. The review conducted at this informal
30 level shall be completed no later than 180 days after the
31 filing of a timely and specific statement of disputed issues
32 by the provider.

33 (2) Nothing in this subdivision shall prohibit the
34 provider from presenting any unresolved grievances or
35 complaints at an impartial hearing pursuant to
36 subdivision ~~(e)~~ (a). The impartial hearing shall be
37 conducted no later than 300 days after the filing of a
38 timely and specific statement of disputed issues by the
39 provider. ~~For noninstitutional providers, a proposed~~
40 ~~decision shall be prepared and transmitted to the director~~

1 ~~and the parties within 60 days after the closure of the~~
2 ~~record of the impartial hearing. For institutional~~
3 ~~providers, a proposed decision shall be prepared and~~
4 ~~transmitted to the director and the parties within 180 days~~
5 ~~after the closure of the record of the impartial hearing.~~

6 (3) (A) Subject to subdivision ~~(g)~~ (f), a final decision
7 in a noninstitutional provider appeal shall be adopted
8 within 180 days after the closure of the record of the
9 impartial hearing, and a final decision in an institutional
10 provider appeal shall be adopted within 300 days after the
11 closure of the record of the impartial hearing.

12 (B) The department shall mail a copy of the adopted
13 decision to all parties within 30 days of the date of
14 adoption of the decision.

15 ~~(g)~~

16 (f) In the event the director intends to modify a
17 proposed decision, on or before the 180th day following
18 the closure of the record of the hearing for
19 noninstitutional providers or the 300th day following the
20 closure of the record of the hearing for institutional
21 providers, the director shall provide written notice of his
22 or her intention to the parties and shall afford the parties
23 an opportunity to present ~~oral and~~ written argument.
24 Following this notice, on or before the 240th day following
25 the closure of the record of the hearing for
26 noninstitutional providers or the 420th day following
27 closure of the record of the hearing for institutional
28 providers, or within that additional time period as is
29 granted pursuant to the sole request of a provider or at
30 the joint request of the provider and the department, the
31 director shall issue a ~~modified~~ *final* decision.

32 ~~(h)~~

33 (g) In the event recovery of a disallowed payment has
34 been made by the department, a provider who prevails
35 in an appeal of a disallowed payment shall be entitled to
36 interest at the rate equal to the monthly average received
37 on investments in the Surplus Money Investment Fund,
38 commencing on the date the appeal is formally accepted
39 by the department or the date payment is received by the
40 department, whichever is later.

1 ~~(i)~~—

2 (h) Except as provided in subdivision ~~(j)~~ (i),
3 commencing 60 days after issuance of the first statement
4 of account status or demand for repayment resulting
5 from an audit or examination made pursuant to Sections
6 10722 and 14170, interest at the rate equal to the monthly
7 average received on investments in the Surplus Money
8 Investment Fund during the month the first statement of
9 account status or demand for repayment was issued shall
10 be assessed against any unrecovered overpayment due to
11 the department.

12 ~~(j)~~—

13 (i) (1) Commencing on the day following the last day
14 of the period covered by an audit or examination made
15 pursuant to Sections 10722 and 14170, interest at the rate
16 established under Section 19269 of the Revenue and
17 Taxation Code which is in effect on the date of the
18 commencement of that interest shall be assessed against
19 any unrecovered overpayment due to the department by
20 providers of durable medical equipment or incontinence
21 supplies.

22 (2) Interest which accrues under this subdivision for
23 recoupment of an overpayment based on the lack of
24 medical necessity for a previously approved claim shall
25 commence to accrue on the date of written demand by
26 the department.

27 ~~(k)~~—

28 (j) The final decision of the director shall be
29 reviewable in accordance with Section 1094.5 of the Code
30 of Civil Procedure within six months of the issuance of the
31 director's final decision.

32 *SEC. 38. Section 14171.5 of the Welfare and*
33 *Institutions Code is amended to read:*

34 14171.5. Any institutional provider of health care
35 services ~~which~~ *that* obtained reimbursement under this
36 chapter to which it is not entitled shall be subject to the
37 following interest charges or penalties:

38 (a) When it is established upon audit that the provider
39 has claimed payments under this chapter to which it is not
40 entitled, the provider shall pay, in addition to the amount

1 improperly received, interest at the rate specified by
2 subdivision ~~(i)~~ (h) of Section 14171.

3 (b) When it is established upon audit that the provider
4 claimed payments related to services or costs ~~which that~~
5 the department had previously notified the provider in
6 an ~~Audit Report~~ *audit report* that ~~such the~~ costs or
7 services were not reimbursable, the provider shall pay in
8 addition to the amount improperly claimed, a penalty of
9 10 percent of the amount improperly claimed after this
10 notice, plus the cost of the audit. In addition, interest shall
11 be assessed at the rate specified in subdivision ~~(i)~~ (h) of
12 Section 14171. Providers who wish to preserve appeal
13 rights or to challenge the department's positions
14 regarding appeal issues, may claim such cost or services
15 and not be reimbursed therefor, provided that they are
16 identified and presented separately on the cost report.

17 (c) When it is established that the provider
18 fraudulently claimed and received payments under this
19 chapter, the provider shall pay a penalty of 25 percent of
20 the amount improperly claimed, plus the cost of the audit,
21 in addition to the amount thereof. In addition, interest
22 will be assessed at the rate specified by subdivision ~~(i)~~ (h)
23 of Section 14171. A fraudulent claim is a claim upon which
24 the provider has been convicted of fraud upon the
25 program. Nothing in this section shall prevent the
26 imposition of any other civil or criminal penalties to
27 which the provider may be liable.

28 (d) Appeals to action taken in subdivisions (a), (b),
29 and (c) of Section 14171.5 above are subject to the
30 administrative appeals process provided by Section
31 14171.

32 (e) Penalties paid by providers under subdivisions (a),
33 (b), and (c) of Section 14171.5 are not reimbursable by
34 the program.

35 (f) As used in this section, "the cost of the audit"
36 includes actual hourly wages, travel, and incidental
37 expenses at rates allowable by State Board of Control
38 rules, and applicable overhead costs.

39 *SEC. 39. Section 14171.6 of the Welfare and*
40 *Institutions Code is amended to read:*

1 14171.6. (a) Any provider of durable medical
2 equipment or incontinence supplies that obtains
3 reimbursement under this chapter to which it is not
4 entitled shall be subject to interest charges or penalties as
5 specified in this section.

6 (b) When it is established upon audit that the provider
7 has claimed payments under this chapter to which it is not
8 entitled, the provider shall pay, in addition to the amount
9 improperly received, interest at the rate specified by
10 subdivision ~~(j)~~ (i) of Section 14171.

11 (c) (1) When it is established upon audit that the
12 provider claimed payments related to services or costs
13 ~~which~~ *that* the department had previously notified the
14 provider in an ~~Audit-Report~~ *audit report* that the costs or
15 services were not reimbursable, the provider shall pay, in
16 addition to the amount improperly claimed, a penalty of
17 10 percent of the amount improperly claimed after
18 receipt of the notice, plus the cost of the audit.

19 (2) In addition to the penalty and costs specified by
20 paragraph (1), interest shall be assessed at the rate
21 specified in subdivision ~~(j)~~ (i) of Section 14171.

22 (3) Providers that wish to preserve appeal rights or to
23 challenge the department's positions regarding appeal
24 issues, may claim the costs or services and not be
25 reimbursed therefor, ~~provided that~~ *if* they are identified
26 and presented separately on the cost report.

27 (d) (1) When it is established that the provider
28 fraudulently claimed and received payments under this
29 chapter, the provider shall pay, in addition to the amount
30 improperly claimed, a penalty of 300 percent of the
31 amount improperly claimed, plus the cost of the audit.

32 (2) In addition to the penalty and costs specified by
33 paragraph (1), interest shall be assessed at the rate
34 specified by subdivision ~~(j)~~ (i) of Section 14171.

35 (3) For purposes of this subdivision, a fraudulent claim
36 is a claim upon which the provider has been convicted of
37 fraud upon the Medi-Cal program.

38 (e) Nothing in this section shall prevent the imposition
39 of any other civil or criminal penalties to which the
40 provider may be liable.

1 (f) Any appeal to any action taken pursuant to
2 subdivision (b), (c), or (d) is subject to the administrative
3 appeals process provided by Section 14171.

4 (g) As used in this section, “cost of the audit” includes
5 actual hourly wages, travel, and incidental expenses at
6 rates allowable by rules adopted by the State Board of
7 Control; and applicable overhead costs ~~which~~ *that* are
8 incurred by employees of the state in administering this
9 chapter with respect to the performance of audits.

